

## Employers: Keep an eye on your pension plans

### Objectivity must be exercised by plan administrator and its agents

BY MARK NEWTON

If you are involved in managing or overseeing a pension plan, the importance of closely supervising your providers cannot be underestimated. The need for objectivity in the administration of a pension plan and in the monitoring of service providers, such as actuaries, is essential. Objectivity must be exercised by both the “administra-

tor” (defined below) and its agents. efficient to eliminate the underfunding. As a result, Slater didn’t have to worry about additional contributions to amortize the deficits.

The chief actuary at the Financial Services Commission of Ontario (FSCO) questioned the use of the asset smoothing. It appeared to be overly aggressive and was a marked departure from the methodology used in the past. The chief actuary ordered new valuations be prepared using methodology acceptable to FSCO. However, before a hearing could be held to determine whether Slater would be bound to comply with this order, the company filed for creditor protection.

FSCO began litigation against the officers and directors of Slater and the lawsuit was settled. FSCO also laid charges against Norton for failing to use actuarial methods and assumptions that were consistent with accepted actuarial practice. The judge dismissed the charges against Norton on the basis the expert evidence introduced by FSCO was biased. There are strict rules concerning the use of expert evidence that, in the view of the judge, were not respected by FSCO.

Pension legislation across Canada, as well as principles developed in court cases, set certain standards that must be

The Ontario Court of Justice released its decision in *Ontario (Superintendent of Financial Services) v. Norton* on Feb. 23, 2007. J. Melvin Norton provided actuarial services to Slater Stainless Corporation for two pension plans. Norton prepared actuarial reports as of Jan. 1, 2002, in May of that year. A year later, in June 2003, Slater filed for creditor protection under the *Companies Creditors Arrangement Act*.

Both pension plans were defined benefit plans and Slater made all contributions to the plans. Employees did not contribute to the plans. The preliminary valuation results showed solvency deficiencies (shortfalls calculated on a wind-up basis) of about \$20 million. Following some discussions between Norton and Slater, Norton used an asset smoothing method to artificially inflate the value of the assets. The assets were inflated suf-

#### PENSIONS

#### IN THIS ISSUE

##### Ask an expert

Eliminating employee stock options • When is summary dismissal allowed? ....2

##### Collecting wage overpayment without union agreement could harm relations

Negotiating directly with employees before settlement of union challenge could upset labour relations balance.....3

##### More cases

**Just cause:** Termination appropriate discipline for resident abuse at care centre.....6

##### You make the call

Job lacked right ingredients for chef.....8

#### CASE IN POINT: Employees working in China

The number of Canadians traveling on business to China has grown exponentially in recent years, fueled by China’s economic boom and an intense desire by Canadian companies to capitalize on that growing market. Toronto immigration lawyer Sergio Karas and Beijing lawyer-Gregory Sy advise employers to make sure employees on business trips to China have the correct visas to suit their needs. ....4-5

*Continued on page 6*

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## CONSTRUCTIVE DISMISSAL: Eliminating employee stock options

**Question:** A regional president plans to eliminate stock options for two levels of employees who have received options on a consistent, annual basis in the past (these options are worth about 10 per cent of the employees' total compensation package). He plans to award them this year's grant and then tell them they won't be receiving grants in the future. Besides the obvious morale issues this could create, I'm concerned this could be deemed constructive dismissal. Is this indeed the case and, if so, how much notice must be given?

**Answer:** You are right to be concerned, on both counts. A change like this can have a profound effect on morale and be seen as a change in the corporate culture. If you do proceed as planned, efforts should be made to counter the inevitable negative reaction in order to avoid a backlash that could lead to the loss of valued employees and difficulty attracting the top talent in your area.

On the legal front, constructive dismissal is a sometimes misunderstood concept. At a general level, constructive dismissal occurs when one party unilaterally changes a fundamental term of the employment relationship without providing proper notice of the change. As you can see, there are three

key elements to this concept: a unilateral change to a fundamental term, without notice.

Unfortunately, very few employment agreements specifically designate which of their terms are fundamental. To use an example from a previous *Canadian Employment Law Today* article, changing the location of an employee's desk is unlikely to support a finding of constructive dismissal. However, even that example must be used with a caveat. If the new desk somehow prevents the employee from carrying out her duties properly, or results in a loss of reputation within the organization, then it is arguable it would constitute constructive dismissal. To go even further, if the new desk were located in the kitchen or washroom, the conclusion would be different. As in other areas of law, each case is fact-specific.

Among other things, the following can constitute constructive dismissal:

- a change in the method of calculating remuneration with a resulting significant reduction;
- a demotion;
- significant geographic relocation of the employee's work base;
- failure to protect an employee from harassment.

However, even dramatic changes will not be considered constructive dismissal if the employer has the right, either explicitly or implicitly, to make the change or has given sufficient notice of the change. That last point is important. Often, the least expensive way to impose change while minimizing exposure is to provide reasonable notice and thus eliminate one of the criteria for a finding of constructive dismissal: a lack of notice. For relocation, a notice such as: "Effective Jan. 1, 2010, your office will be relocated to Montreal."

The amount of notice required would be the same as that required in the event of termination. This will be different for each employee as they will each have different lengths of service, different positions and be of different ages. The best approach will be to determine the longest applicable

notice period, and then give all employees that amount of notice of the change (or slightly longer, to be safe). As you will realize, this can be a very long time. However, it would be shortsighted to adopt this strategy but provide an inappropriately low amount of notice.

Once an employee has been notified of the future change, she is, of course, free to seek other employment, as she would be at any time. However, if she remains in the employ of the company, it will be entitled to impose the change once the notice period has passed. If the employee chooses to leave at that point, she should be precluded from successfully bringing a claim for constructive dismissal.

Another alternative would be to offer something to the employees in exchange for their agreement to accept the elimination of the stock options. In other words, turn a unilateral change into one that is mutually agreed upon. The benefit offered to the employee is legally referred to as consideration. It can be anything of value, from a one-time bonus to an increase in salary or extra time off each year. However, bear in mind it cannot be something the employee would otherwise have received. I once had a client suggest offering a bonus to its employees in exchange for their agreement to be bound by a non-solicitation covenant. However, the bonus in question was the annual bonus they would have received in any event. I advised them to think of something else to offer.

Although I have not seen any judicial consideration of the minimum value that would be sufficient, I would advise against the loonie or toonie that some employers seem to be inclined to offer.

I note that the inherent frailty with this approach is that it requires that every employee accept. Otherwise, you may still be faced with a constructive dismissal claim on the part of those who choose not to accept the offer.

*Continued on page 7*

# Health authority warned against negotiating directly with employees

## Discussion of wage repayments before settlement with union could upset labour relations balance, board says

By **JEFFREY R. SMITH**

**T**he Saskatchewan Labour Relations Board has ordered a group of regional health authorities and employers to stop negotiating directly with employees until a dispute with its unions over the collection of wage overpayments has been settled.

The Saskatchewan Government and General Employees' Union, Canadian Union of Public Employees and three branches of the Service Employees International Union filed a complaint with the board when the province's various health employers, organized under the umbrella of the Saskatchewan Association of Health Organizations (SAHO), bypassed the union in negotiating the collection of wage overpayments from its employees. The union claimed the employers were attempting to unilaterally change the terms of employment and asked the board to issue an order to stop the members of SAHO from negotiating directly with employees until the matter was resolved.

The wage overpayments originated from a joint job evaluation (JJE) process developed by SAHO and the union in 1999, which was intended to standardize job classifications in the provincial health care system. The JJE was implemented in 2002 and a new wage structure came into effect in 2004. In June 2005, the employers began trying to reclaim what they considered wage overpayments of those positions whose salaries were decreased in the new wage structure. They began meeting with affected employees to calculate the amount owing and how to pay it back, which they proposed could be through wage deduction or withholding disabil-

ity benefits.

The union immediately informed SAHO it should negotiate with them and not the employees directly. The union disputed the amounts of some of the overpayments and advised SAHO any withholding of wages or other discussion with employees was considered a direct negotiation and a failure to recognize their collective bargaining rights. The Labour Standards Branch of the provincial government also sent SAHO a letter indicating any wage deductions could potentially be against the law.

The employers stopped their talks with employees and reached an agreement with the union in January 2006 for a two per cent retroactive wage adjustment for 25,000 employees. However, SAHO advised the union in May 2006 its members intended to collect the full amount of JJE overpayments, which would offset some of the wage adjustments. It argued the original JJE agreement allowed them to do so and after consultation, the Labour Standards Branch agreed the overpayments could be recovered from employees. SAHO identified several methods to collect the money, including cash, cheques, automatic withdrawal or cashing in lieu and vacation time.

The union requested information on the amounts individual employees owed but SAHO refused, claiming consent of each employee was required. The union continued its opposition to the overpayment collection process and claimed SAHO refused to negotiate with them. SAHO took the position the process was negotiated with the JJE agreement and no further discussion was needed. In July 2006 a few of the employers began directly contacting employees to arrange the collection of

overpayments. The union argued these were attempts "to make a contract directly with the employee" and contrary to the collective agreement.

The board noted the implementation agreement between SAHO and the unions allowed the employers to recover wage overpayments which were the result of errors in the JJE process. Working out the terms of the recovery with employees was not necessarily a process requiring collective bargaining.

"The employer was not negotiating terms and conditions of employment with employees," the board said. "But, rather, reasonable terms of a repayment scheme for each employee and it was not mandatory that an employee meet with his or her employer."

However, the board found the final decision in the case could have a significant impact on the balance of labour relations. If it was decided in SAHO's favour, continuing negotiations with employees would not have presented a problem. Conversely, if the final outcome was in favour of the union, any negotiating SAHO's members would have done up to that point could be damaging to the collective bargaining process.

With this in mind, the board ordered SAHO and its member employers to stop their efforts to collect wage overpayments from employees until a final decision in the case was reached, return any amounts already collected and inform the unions which employees had already made payments. ■

**For more information see:**

■ *S.E.I.U., Locals 299, 333 & 336 v. Saskatchewan Assn. of Health Organizations*, 2006 CarswellSask 838 (Sask. Lab. Rel. Bd.).

CASE IN POINT: WORK VISAS FOR CHINA

# Employees working in China? Avoid common pitfalls

Canadian business trips to China are on the rise but mix of traditional and modern policies can cause visa headaches

BY SERGIO KARAS AND GREGORY SY

The number of Canadians traveling on business to China has grown exponentially in recent years, fueled by China's economic boom and an intense desire by Canadian companies to capitalize on its growing market.

In the recent past, a visa allowing a foreigner to work legally in China was difficult to obtain and regulations within the country were strict, preventing foreigners from visiting or staying in certain areas which were considered to be "non-secure" by the Chinese government. While China is now far more liberal in its approach to granting work visas for foreign expatriate assignments, there are still vestiges of the old restrictive system, often resulting in a confusing and contradictory regulatory regime for foreign workers.

One obvious area of controversy is the inability for foreigners to become naturalized as Chinese citizens, no matter how long they have lived in China. There is no formal naturalization process nor a systematic "immigration process" which would allow long-term residents to obtain Chinese citizenship so they no longer require a work visa. However, China recently introduced a "green card" system which allows for permanent residency by foreigners but its availability is restricted to all but the most affluent investors and influential scholars and individuals.

## Distinction between work permit and business visa

Consistent with China's interest in attracting foreign investment, individuals who travel to the country for an official visit, business, lectures, exchange program or short-term study can obtain a business "F Visa" and enjoy relatively unrestricted status. Renewal of this visa within the country allows the holder three months, six months or one year of either single- or multiple-entry status. The long-term duration of the F Visa and the possibility of transferring funds offshore without the knowledge of Chinese authorities have resulted in a large number of foreigners working illegally in China. While this may allow the holder to avoid some of the procedures associated with the more complex and difficult to obtain work "Z Visa" and to escape taxation within China, there are several reasons why they should avoid falling into this trap:

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### While China is now far more liberal in its approach to granting work visas, there are still vestiges of the old restrictive system

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**Tax penalties.** China has a number of tax treaties with various nations, including Canada and the U.S., which allows tax authorities to interact with their counterparts in treaty countries.

According to the Regulations of the State Administration of Taxation, if a foreigner is suspected of evading taxes while in China, he may be prevented from leaving the country until an investigation is completed. Upon conclusion of the investigation, if the individual is found to have avoided paying taxes on income subject to Chinese tax laws, he may be liable for interest on unpaid amounts plus a fine ranging from three to five times the unpaid amount.

**Illegality.** Obviously, avoiding payment of taxes under Chinese tax law is illegal and working in China without appropriate permits is against the law and may result in serious consequences.

**Lack of protection for legal rights.** An individual who is not under contract with a Chinese entity will be unable to sue her employer for breach of obligations without an employment agreement. According to Chinese labour laws, employment contracts must be in written form.

### Common mistakes made by foreign expatriate workers coming to China

**Time requirements for visas and permits.** In order to obtain a Z Visa to travel to China, there are a number of steps an applicant must take:

*Obtain a foreign employment license.* The Chinese employer must attend at the Ministry of Labour and Social Security in order to obtain an

*Continued on page 5*

## CASE IN POINT: WORK VISAS FOR CHINA

# Employees should have the right visa

...continued from page 4

employment license for the intended hire. The process takes about 10 business days in Beijing, but may vary in other parts of the country.

*Issue an invitation letter.* After the Chinese employer obtains the foreign employment license, they must obtain a stamped invitation letter from the local bureau of commerce. This process takes two to three business days.

*Make an application at a consulate or embassy.* The prospective employee must apply to the Chinese embassy or consulate in her home country, with the invitation letter, so a visa can be issued. The process may take four business days, though often expedited service is available for an extra fee.

In total, the Chinese company and the foreign employee should allow for about one month for processing of a Z Visa.

Further, on entry into China, there are a number of steps which must be taken which will take about 21 working days to complete, depending on the individual applicant. As Z Visas are only issued for single-entry, if the individual must exit China before completion of the in-country procedures, she will have to apply for another Z Visa prior to re-entering China.

**Requirement to register within 24 hours of entry.** Unless hotel accommodations have been made, all foreign nationals intending to work or reside in China must register within 24 hours of arrival with the local Public Security Bureau in the proposed place of residence. Failure to register may result in a fine of several hundred RMB (yuan) per day.

**Entering China with the wrong visa.** In order to obtain a working card and employment license and residence permit, the foreign employee must enter China on a Z Visa. Failing to do

so will result in substantial difficulties and may require re-application for the appropriate visa, depending on the city in which the individual will work.

**Requirements to hire foreign employees.** According to the Rules for the Administration of Foreign Employment, “the post to be filled by the foreigner recruited by the employer shall be the post of special need, a post that cannot be filled by any domestic candidates for the time being.” As such, according to a strict interpretation of legislation, the employer must establish the post cannot be filled by any Chinese national at that particular time. However, in practice, the threshold for approval is relatively low, particularly in management and professional employment situations. The rules also require the foreign individual to have been educated to degree level and possess at least two years of work experience outside of China.

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**The employer must establish the post cannot be filled by any Chinese national at that particular time. However, the threshold for approval is relatively low**

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As is often the case in China, legislation is flexible and an HR manager should not be overly concerned about Chinese foreign employment standards as, based on practice, these requirements are not interpreted strictly.

The above are some of the more common errors made by foreign companies when sending employees to China on business. Employers must take care to comply with the sometimes complicated system of permits and regulations governing foreign workers in that country. With potential

obstacles such as language barriers and bureaucratic difficulties often faced by foreign employees, the visa process may seem overwhelmingly complex at times. The key to navigating the system is engaging competent local counsel who will assist you through each step and ensure a smooth transition of the employee into the new workplace and country. ■

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*Sergio R. Karas is a Certified Specialist in Canadian Citizenship and Immigration Law by the Law Society of Upper Canada. He is currently co-Chair of the International Bar Association Immigration and Nationality Committee and Vice-Chair of the Ontario Bar Association Citizenship and Immigration Section. He can be reached at Karas & Associates, (416) 506-1800 and karas@karas.ca.*

*Gregory M. Sy is a qualified attorney in the People’s Republic of China with the Beijing offices of Lehman, Lee & Xu. He can be reached at gsy@lehmanlaw.com.*

## FROM THE ARCHIVES

Chinese employment law can be complicated to figure out and it’s always a good idea to consult knowledgeable counsel. For more information on the intricacies of Chinese employment law, please see Jenny Yan’s article, “A brief introduction to Chinese employment law,” available on the *Canadian Employment Law Today* website.

To view the article, simply go to [www.employmentlawtoday.com](http://www.employmentlawtoday.com), click on Advanced Search and enter article # 1081.

## MORE CASES

COMPILED BY JEFFREY R. SMITH

### JUST CAUSE:

#### Termination appropriate discipline for resident abuse at care centre: arbitration board

**A SASKATCHEWAN** long-term care facility was justified in firing a cook who was involved in a physical incident with a resident, the Canada Arbitration Board has ruled.

Brian Watson-Colter, 61, worked as a cook at the Ituna Pioneer Health Care Centre, where his primary responsibilities were to prepare meals and serve them to the residents. He

occasionally assisted the centre's special care aides in seating or moving residents if asked but it was not part of his official job duties. On June 30, 2006, he was involved in an incident where an elderly resident fell to the floor during a dispute over seating for dinner.

The resident had sat in a chair usually occupied by another resident, who took exception and began an argument. A special care aide attempted to convince him to move to another chair, but the resident refused. Upon hearing the commotion, Watson-Colter came out of the kitchen to help. He told the resident to get out of the chair and when he refused, Watson-Colter reportedly tipped the chair forward. The resident, who was in his 80s, fell forward onto the floor. An incident report was filed and the centre began

an investigation.

The investigation found Watson-Colter's account of the incident varied in different interviews and concluded he was an unreliable source for accurate information. He also refused to accept responsibility for his role in the incident or acknowledge that his actions played a part in the resident's fall. The special care aide, however, was considered reliable and stated she had things under control and had not requested Watson-Colter's assistance.

After interviewing the parties and considering the health authority's zero-tolerance policy on resident abuse, the centre's administrators decided to fire Watson-Colter. Though not all cases of resident abuse resulted in termination,

*Continued on page 7*

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# Conflict between business and pension interests

*...continued from page 1*

met in the administration of a pension plan and a pension fund. Under the Ontario *Pension Benefits Act*, the "administrator" of a pension plan is required to use requisite care, diligence and skill that a person of ordinary prudence would use. The "administrator" is defined as the person or persons that administer a pension plan and, in many cases, is the employer, the employer's board of directors or a committee established by the employer.

The administrator is also required to use all relevant knowledge and skill it possesses or ought to possess. If the skillset is not resident within the administrator, as is most often the case with actuarial services, the administrator may then employ agents, where it is reasonable and prudent to do so.

There is a legal question whether or not an actuary is an agent of the administrator, or simply an advisor. That issue aside, agents must use the same degree of care, diligence and skill as the administrator and must also use all relevant knowledge and skill they possess. Because of an actuary's specialized knowledge, the bar is set a little higher

for actuaries than administrators.

The PBA also clarifies that if an administrator employs an agent, it must personally select the agent. It must be satisfied of the agent's suitability to perform the services for which it is hired and must also supervise the agent as is reasonable and prudent. It's a common and prudent practice to evaluate all third party service providers (agents and advisors) annually.

It's very important both the administrator and the agent(s) avoid conflicts of interest. Under the PBA, they "shall not knowingly permit" their interests to conflict with their duties and powers in respect of the pension fund. For example, if a plan sponsor's business is failing, the administrator (which may be the Board of the plan sponsor) either alone or in concert with the actuary, should not change actuarial assumptions and methods to accommodate its business, to the detriment of the pension plan members.

Pension plan administrators depend upon the specialized expertise of actuaries, investment consultants, investment managers, custodians, recordkeepers and legal counsel. While not all of these third parties are agents (legal counsel, for example, are clearly not agents), it is

essential that the pension plan administrator closely and effectively monitors the quality, timeliness, cost and effectiveness of the services being provided. This is particularly the case in which the fees of the third parties are being paid from the pension fund.

The pension plan governance guidelines established by the Canadian Association of Pension Supervisory Authorities (CAPSA), provide a useful framework for the management and oversight of a pension plan. Those guidelines promote a regular review of governance. The decision to use third parties and then the selection and ongoing monitoring of those persons is only one part of governance, albeit a very important one. ■

#### For more information see:

■ *Ontario (Superintendent of Financial Services) v. Norton*, 2007 CarswellOnt 1425 (Ont. C.J.).

*Mark Newton is a lawyer with Heenan Blaikie in Toronto and chair of the Ontario Bar Association's Pension and Benefit Section. He can be reached at (416) 643-6855 or [mnewton@heenanc.ca](mailto:mnewton@heenanc.ca).*

## MORE CASES

...continued from page 6

the administrators felt Watson-Colter's failure to acknowledge responsibility or show regret made it unlikely discipline would suffice.

The arbitration board found Watson-Colter was responsible for the chair tipping forward and causing the resident to fall to the floor and noted "employees in the health-care field are properly held to a very high standard of conduct. That is necessary to ensure that residents and patients are treated properly and with dignity and respect."

The board also noted the collective agreement and the health authority's policy allowed for disciplinary measures "up to and including dismissal." Particularly, the administration was allowed an element of discretion in instances of resident abuse. In this case, the board found Watson-Colter's actions were "reckless, rash and certainly lacked caution." Combined with his failure to accept any responsibility for the incident, this was a serious breach of policy and behaviour deserving of maximum discipline. Considering resident abuse was the most serious misconduct an employee could commit, the board agreed termination was an appropriate course of action for the cen-

tre to take.

"While termination is not the only response permissible in cases of resident abuse, Mr. Watson-Colter's reckless behaviour, coupled with his reluctance to accept responsibility for what happened and his lack of remorse, leaves us with no confidence that Mr. Watson-Colter would act safely and with good judgment in the future," the board said.

"We have concluded that his termination was justified. In the circumstances lesser discipline would be neither 'just and reasonable' nor 'just and equitable'." See *C.U.P.E., Local 4980 v. Sunrise Health Region*, 2007 CarswellNat 476 (Can. Arb. Bd.).

## ASK AN EXPERT

...continued from page 2

### SUMMARY DISMISSAL: When is summary dismissal allowed?

**Question:** An employee has been having performance issues for some time and we're thinking of firing him but are unclear on how bad things would have to be to not require notice. At what point would summary dismissal without notice be permissible?

**Answer:** If dismissal for cause is considered by many to be near impossible, then dismissal for cause based upon poor performance might be viewed as a lost cause. It is arguably the most difficult ground for summary dismissal an employer can seek to establish. The courts are reluctant to allow employers to summarily end the relationship without any notice or pay in lieu. As a result, the burden upon employers who seek to establish just cause can be an onerous one. The courts will consider the entirety of the employment relationship when deciding whether it has been met.

Many Canadian judges have adopted the approach used by labour arbitrators

in this context, who have very specific requirements for finding just cause for dismissal based on poor performance. Generally, employers must show:

- the level of performance required;
- the employee was advised of the applicable standard;
- it gave appropriate instruction and supervision to assist the employee in reaching the standard;
- the employee did not reach the standard; and
- the employee was warned that a failure to meet the standard would lead to the termination of her employment.

In other words, it is not sufficient to simply tell an employee her performance is not up to standards and they better "shape up or ship out." Rather, employees must be explicitly told of the standard of performance that is expected of them. They must also be provided with a reasonable amount of time to bring their performance up to that standard. It is advisable the employee be advised of the timeframe within which she is expected to improve.

As appropriate, the employer must work with the employee to help her reach the required standard. This should involve regular meetings to discuss the employee's progress, or lack thereof. In many cases, the employer should provide coaching to the employee, which could involve observing her performance and offering

suggestions for improvement. Alternatively, the employer might want to place the subject employee with someone more senior who can demonstrate the type of performance that is expected.

In short, the key is to make sure the employee is aware her performance is not up to the company's expectations, and her failure to improve will result in termination. Then, the employer must provide the employee with a reasonable opportunity to improve.

It goes without saying that dismissing an employee for cause is inherently risky for an employer. Basing that dismissal upon performance issues is even riskier. However, following the steps outlined above should help minimize that risk. Alternatively, you can simply bite the bullet and provide notice of termination or pay in lieu. In appropriate circumstances, working notice may be the course of action with the least risk.

*Stuart Rudner is a partner who practices commercial litigation and employment law with Miller Thomson LLP's Toronto office. He can be reached at (416) 595-8672.*

### MORE CASES ONLINE

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# Job lacked right ingredients for chef

This instalment of You Make the Call looks at a situation where there was confusion over whether an executive chef quit or was forced out by the management of a hotel restaurant.

Ray Evans worked at O'Doul's Restaurant and Bar in Vancouver in 1992, first as an assistant chef and later an executive chef. His job performance was viewed positively except for one incident in 2001 for which he was disciplined. He was given a written warning and had no further problems.

Evans had ongoing frustrations at work stemming from his lack of input on



the restaurant's menu or staff. These frustrations culminated with Evans bringing a note from his doctor on May 21, 2004, requesting a medical leave of two weeks. Evans refused to discuss the situation and immediately left the restaurant.

Lacking information on why Evans went on leave and not having any suitable replacement, the restaurant placed an ad to "test the market" in case he didn't return to work. A doctor's report soon arrived indicating Evans suffered from "anxiety, anger, frustration, sleep disturbance" caused by disagreements with the assistant general manager over how to run the restaurant. He was also bipolar.


Evans met with the general manager on June 10, 2004 and confirmed his frustration over not having any authority and the disagreements. He indicated he didn't think he could return to work unless he was given more autonomy. The manager expressed doubts this was possible and they would try to work out a solution.

On June 14, 2004, Evans gave his supervisors another doctor's note saying he would require further leave for treatment until July 5. He told the manager shortly before then he wanted to return to work. The manager indicated he would be happy to have him back but it had to be under the same conditions as before.

Five days later the manager conceded it didn't seem they could resolve matters, so he offered 12 weeks' severance pay. This was less than packages given to others because the manager argued Evans, not the hotel, had instigated his departure. Evans had also found out about the advertisement for his position

and assumed the hotel had not intended for him to return from his medical leave.

Evans claimed the meetings had been an attempt to force him to accept a severance package and the hotel had been trying to dismiss and replace him.

 **You make the call**

Did the hotel's actions constitute constructive dismissal?  
OR  
 Was the hotel just looking after its interests to protect against the chef's possible departure?

**IF YOU SAID** the hotel was protecting its interests because it seemed the worker was unlikely to return, you're right.

The court noted constructive dismissal results when an employer breaches the employment contract by changing a fundamental term of employment. Evans was told he was welcome to work under the same conditions but the hotel could not accommodate his demands for increased authority. It was Evans who wanted changes and indicated he could not work under the existing circumstances.

The court also found the changes Evans wanted did not fall within the duty to accommodate a disability, since the requested changes had little to do with his bipolar condition.

The hotel treated Evans with "civility, decency, respect and dignity" despite the abrupt and mysterious way he went on medical leave, the court said. With the lack of information initially given about the reasons for his leave and his statement that he couldn't work under the current conditions, the hotel had reason to believe Evans might not return.

Without proof of constructive dismissal, Evans' lawsuit was deemed a rejection of his employment contract and effectively ended his employment.

**For more information see:**

■ *Evans v. Listel Canada Ltd.*, 2007 CarswellBC 427 (B.C. S.C.).

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E-mail: carswell.customer@thomson.com  
Website: www.employmentlawtoday.com

**THOMSON**  
★  
**CARSWELL**

One Corporate Plaza  
2075 Kennedy Road, Toronto,  
Ontario, Canada M1T 3V4

**Director, Carswell Business:** Ben Wentzell  
**Publisher:** John Hobel  
**Managing Editor:** Todd Humber  
**Editor:** Jeffrey R. Smith  
**E-mail:** jeffrey.r.smith@thomson.com

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