Components

- Legal context
- Organizational context
- City’s experience 2001 – 2004
- Q & A
Topics to be Covered

- Introduction
- Termination Without Cause
- Notice/Court Awards
- Severance
- Termination for Just Cause
- Operational and Other Issues in Proving Cause
Introduction

- Termination is a right held by both the employer and the employee. These rights, however, come with responsibilities. The main responsibility of the employer being; compliance of appropriate procedures and laws, as outlined by the Employment Standards Act (ESA) in regards to notice of intention to terminate and severance.

Termination Without Cause

- Not necessarily because they have done anything wrong but simply because the employer has found that their services are no longer required.
- e.g. restructuring
- Employee is entitled to and must receive from their employer notice of the termination.
Elements of Separation Payments

- Notice (Employment Standard Act)
- Severance (Employment Standard Act)
- Additional payments ("Common Law")

Minimum Ranges of Notice ESA c.41, s.57

<table>
<thead>
<tr>
<th>Years of Service</th>
<th>Notice or Pay in Lieu</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 months to under 1 yr</td>
<td>1 week</td>
</tr>
<tr>
<td>1 yr to under 3 yrs</td>
<td>2 weeks</td>
</tr>
<tr>
<td>3 yrs to under 4 yrs</td>
<td>3 weeks</td>
</tr>
<tr>
<td>4 yrs to under 5 yrs</td>
<td>4 weeks</td>
</tr>
<tr>
<td>5 yrs to under 6 yrs</td>
<td>5 weeks</td>
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<tr>
<td>6 yrs to under 7 yrs</td>
<td>6 weeks</td>
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<tr>
<td>7 yrs to under 8 yrs</td>
<td>7 weeks</td>
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<tr>
<td>8 years or more</td>
<td>8 weeks</td>
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Severance ESA 64. (1)

- An employer who severs an employment relationship with an employee shall pay severance pay to the employee if the employee was employed by the employer for five years or more and,
- (a) the severance occurred because of a permanent discontinuance of all or part of the employer's business at an establishment and the employee...

Calculating Severance Pay
ESA 65. (1)

- Severance pay under this section shall be calculated by multiplying the employee's regular wages for a regular work week by the sum of,
- (a) the number of years of employment the employee has completed; and
- (b) the number of months of employment not included in clause (a) that the employee has completed, divided by 12.
Limit ESA 65 (5)

- An employee's severance pay entitlement under this section shall not exceed an amount equal to the employee's regular wages for a regular work week for 26 weeks.

Common Law Precedents

- Reasonableness of notice is determined by:
  - Character of Employment
  - Length of Employment
  - Employees Age
  - Availability of Similar Employment
- With Consideration of:
  - Experience
  - Training
  - Qualifications of the employee
Common Law v. Employment Standards Act

- When the common law characteristics for determining reasonableness are not considered and the employer only seeks to follow the minimum as outlined by the ESA wrongful dismissal has occurred.

Bardal v. The Globe and Mail Ltd.

Damages:
- 1 year notice
- Entitled to receive the difference of salary as his new job paid less than the Globe and Mail position.
- Increase in pension with another year’s service factored in.
Wallace v.
United Grain Growers Ltd.

Damages:
• Damages for wrongful dismissal based on 24 month notice period and $15,000 in aggravated damages resulting from mental distress.

Court of Appeal For Ontario
Shirley Marshall v.
Watson Wyatt & CO.

• Damages: Jury found Watson Wyatt was obliged to pay Ms. Marshall compensation equivalent to 12 months notice. Consisting of a 9 month reasonable notice period and 3 months for bad faith conduct in the way it dismissed her.
Court of Appeal For Ontario
Shirley Marshall v. Watson Wyatt & CO.

- $75,000 punitive damages awarded
- Case tried before jury which awarded Ms. Marshall damages of $516,242.82.

Notice

- If the proper amount of notice or termination pay is not given wrongful dismissal has occurred.
Termination for Just Cause

- An employee's conduct is in serious violation of company policy or the employee has acted in a manner that significantly jeopardizes company or fellow employees.

Operational and Other Issues in Proving Cause

- Erroneous conclusion about whether cause exists can be extremely costly.
- Crucial to determine if you have a solid case and the documented proof to substantiate the claim. The standard required by courts is generally high.
- Ongoing impact on the organization while a case for cause is built.
Non Union Terminations
Employment Agreements

- Pre-amalgamation – Transition Board
  - For Department Heads and Directors
    - Severance entitlement – 8, 5, 18 months
    - Reasonable alternate employment clause up to the 8th month
Non-Union Terminations
Post Amalgamation

• Non-Union Severance Policy
  – Pre-amalgamation contracts retained for Department Heads & Directors hired in 2001
  – New hires/promoted Department Heads, Directors, Managers
    • Department Heads, Directors - 4 weeks per year of service to max 18 months
    • Managers and below – 3 weeks per year of service to max 18 months

Non-Union Terminations
Post Amalgamation

• Alternate employment
  – At any time alternate employment secured
    • Declaration requirement
    • 50% of monies owing on balance
Eligibility for Re-hire

- Pre-amalgamation - ineligible only until separation payment period expired
- Post-amalgamation
  - If retirement incentive – no rehire
  - If separation – no rehire in any capacity until period of payment has expired
    - Some limits e.g. if separated employee is working for a consultant or for a third-party firm, the City might hire the firm through the normal tender/selection process

Non-Union Termination Process

- Mandatory involvement of Human Resources
- Where appropriate and/or feasible – reasonable offer of alternate employment
- City Manager consulted/advised
- All legal deliberations through Director, Employee and Labour Relations
# City Experience 2001 – 2005
## Termination Without Cause

<table>
<thead>
<tr>
<th>Reason</th>
<th>Number</th>
<th>Cost</th>
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<tbody>
<tr>
<td>Council directed</td>
<td>2</td>
<td>$560,554.90</td>
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<tr>
<td>Early end of contract</td>
<td>6</td>
<td>$182,518.22</td>
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<tr>
<td>Inability to meet changing expectations in the role</td>
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<td>$995,073.65</td>
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<tr>
<td>Restructuring</td>
<td>13</td>
<td>$1,121,007.28</td>
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Thank you!

Q & A