



# It's not you, it's me: Can an employee suddenly break up with you?

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The recent decision of [Gagnon & Associates Inc. et. al. v. Jesso et. al.](#), by the Superior Court of Ontario reminds employers and employees alike that at common law reasonable notice is a two-way street; not only must an employer provide an employee with reasonable notice of termination, but an employee must also provide reasonable notice of resignation.

## Overview

This decision is in respect of a claim for wrongful *resignation* brought by the employer Gagnon & Associates Inc. (the Company) related to two disgruntled employees; Barry Jesso (Jesso) and Patrice Comeau (Comeau). Jesso and Comeau together were responsible for 60% of the Company's sales. Jesso worked for 10 years for the Company and felt he was underpaid. The Company maintained the status quo and did not improve Jesso's remuneration.

In response, Jesso and Comeau approached a competing company with a proposal to open up a new office in the same region in which they worked for the Company. The competing company hired them and in July 2006, both Jesso and Comeau gave the Company their resignation letters, effective the same day. Jesso offered to work two additional weeks to complete his existing duties, conditional upon the Company's acceptance of his calculation of commission owing to him. The Company refused and Jesso never returned to work. The Company struggled to find qualified salespersons to take the place of Jesso and Comeau and in light of losing its two most senior salespersons, the Company's sales were negatively impacted.

The Company led expert evidence that the departure of Jesso resulted in significant loss of sales for which it claimed it should be compensated. Specifically, the Company pled that in the three year period following Jesso's departure the Company made between \$2.782 million and \$3.14 million less than it would have had Jesso and Comeau remained in its employ.

## Decision

The Court found that Jesso did not give reasonable notice of resignation and stated:

"[...] he was a senior employee with 10 years' experience and was responsible for a significant percentage of [the Company]'s sales. The evidence at trial established that the market for experienced HVAC sales persons was limited and that a replacement hire could not be made until September 2006. In

addition, Jesso knew that Comeau, the other senior salesperson would be leaving GA on the same day thereby putting GA in a significantly difficult position. In these particular circumstances, a notice period of two months would have been appropriate.”

The Court did not accept the Company’s calculation of lost revenue and Jesso’s associated liability. In this regard, the Court held that Jesso’s share of lost revenue to the company over a two month period amounted to \$35,164. In response to the Company’s claim for wrongful resignation, Jesso successfully countersued for commissions owing to him which the Court found to be \$38,501. These amounts were set off against each other, but the employer could at least make claim to a moral victory.

## **Our Views**

As noted in the decision, it is a well-established common law principle that an employee is obliged to give reasonable notice of resignation from employment. The notice required of an employee will be a function of that employee’s position, length of service with the employer and the time it would reasonably take the employer to replace the employee or otherwise take steps to adjust to the loss. When an employee, especially a key employee, offers his or her resignation, absent a contractual agreement, an employer need not accept a short resignation notice period, especially if it will leave the employer in a vulnerable position. For employers, it is always wise to include a term in an employee’s employment agreement that stipulates the notice period an employee must give in regard to his or her resignation.

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