CITATION: Grealy v. XL Tool Inc., 2025 ONSC 4010
COURT FILE NO.: CV-24-279
DATE: 2025/07/09

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:		
RYAN GREALY	Plaintiff	Robert Konduras, Counsel for the Plaintff
– and –		
XL TOOL INC.	Defendant	Robert Bickle and Nicole Hobbs, Counsel for the Defendant
		HEARD: June 10 and 13, 2025

G. E. TAYLOR

REASONS FOR JUDGMENT

Introduction

[1] The plaintiff began working for the defendant on June 19, 2023 on a part-time basis. He commenced fulltime employment in mid-September 2023. The plaintiff was hired as a machinist. On February 2, 2024, the defendant terminated the employment of the plaintiff without cause and upon payment of one week's severance pay as required by the *Employment Standards Act*. The plaintiff claims that payment of one week's severance pay was inadequate and has brought this action for damages for breach of the contract of employment.

Evidence

[2] This matter proceeded under the simplified procedure pursuant to R. 76 of the *Rules of Civil Procedure*. The evidence of each witness was presented by affidavit followed by oral cross-examination and re-examination.

[3] The plaintiff was employed by Diematic Tooling Solutions Inc. when he was told by a coworker, Dragon Popovic, that the defendant wished to hire the plaintiff to be part of a new division within the company. The plaintiff believed that Popovic worked for the defendant based on seeing business cards of the defendant with Popovic's name on them and viewing Popovic's LinkedIn profile which stated that he had been employed by the defendant since 2020. Popovic also told the plaintiff that he was close friends with Gord Jokic who is the owner of the defendant.

[4] On March 3, 2023, Popovic invited the plaintiff to accompany him to the plaintiff's place of business and meet the owner. On that day, Gord Jokic gave the plaintiff a tour of the defendant's premises. At the conclusion of the tour, Gord Jokic informed the plaintiff that the defendant was hiring.

[5] On March 4, 2023, Popovic sent a text message to the plaintiff advising that Gord Jokic wanted the plaintiff to work for the defendant. At that time, the plaintiff was not interested in leaving his employment with Diematic. The plaintiff did advise Popovic that he would be interested in working part-time for the defendant. In cross-examination, the plaintiff admitted that Popovic's involvement was to introduce him to the defendant and nothing more.

[6] On April 24, 2023, the plaintiff received a text message from Graham Jokic, a manager with the defendant, asking if the plaintiff would meet with him. The plaintiff agreed to attend at the defendant's place of business to meet with Graham Jokic. On April 26, 2023, the plaintiff met with Graham Jokic and Chris Hergott who was Vice President of the defendant. At this meeting, the plaintiff told Graham Jokic and Hergott that he had been working for Diematic for 14 years. He said overtime opportunities had decreased at Diematic and accordingly he would be interested in working part time for the defendant. Hergott stated that part-time work was not available. Graham Jokic advised the plaintiff that if he learned a program called Mastercam there would be part-time work available. On May 6, 2023, the plaintiff advised Graham Jokic that he had

completed training on Mastercam. On May 9, he sent a text message to Graham Jokic inquiring as to whether his May 6 email had been received.

[7] Towards the end of May 2023, the plaintiff was advised that he would be laid off by Diematic in mid-June and this layoff was expected to last for one to two months. During his tenure at Diematic, the plaintiff had been temporarily laid off on five or six occasions but had always been recalled. According to the plaintiff, Popovic told Graham Jokic about the anticipated layoff and that the plaintiff would be willing to accept part-time employment with the defendant. On June 9, 2023, the plaintiff met with Graham Jokic and they agreed that he would begin part-time employment with the defendant at an hourly wage of $28. Graham Jokic told the plaintiff that he would like him to work full-time.

[8] The plaintiff says that at the meeting on June 9, Graham Jokic told him he would like the plaintiff to become a lead hand within a year, that the defendant did not layoff employees and that if the plaintiff agreed to work full-time, the defendant would pay him more than he was earning at Diematic. The plaintiff said that he found this offer enticing, but he was still committed to his employment with Diematic. The plaintiff began working part-time for the defendant on June 12, 2023.

[9] Towards the end of August 2023, plaintiff was informed that he would be called back to Diematic in the near future. He advised Graham Jokic of this and a meeting was arranged involving Hergott. On August 28, 2023 the plaintiff was offered a full-time position with the defendant. He was offered $30 per hour. The plaintiff advised Graham Jokic and Hergott that he was being paid $30 an hour at Diematic and had been told that he would earn significantly more than that if he accepted full-time employment with the defendant. The following day, the plaintiff again met with Graham Jokic and Hergott at which time he was made an offer of employment paying $35 per hour.

[10] On August 28, 2023, the plaintiff met with Graham Jokic and Hergott. He was offered full-time employment earning $30 per hour. Plaintiff did not accept this offer. In cross-examination, plaintiff agreed that there was no discussion about the lead hand position at this meeting. The

following day, the plaintiff again met with Graham Jokic and Hergott at which time he was offered employment at $35 an hour plus benefits. He accepted this offer.

[11] On August 30, 2023, the plaintiff resigned from his employment with Diematic and accepted the offer of employment from the defendant. He was still on layoff at the time. The plaintiff says he accepted the defendant's offer of employment based on the representations made to him by representatives of the defendant.

[12] On February 2, 2024, the plaintiff's employment with the defendant was terminated. The reason for the termination was said to be a financial downturn. The defendant paid the plaintiff termination or severance pay equivalent to one week's income.

[13] In the days following the termination, the plaintiff spoke to the owner of Diematic to inquire if employment would be available. It was not. The plaintiff commenced a job search and was successful in securing employment with Axis Tool and Gauge on February 26, 2024 earning $30 per hour with an increase to $31 per hour after three months. In November 2024, the plaintiff was laid off by Axis and recalled in February 2025. The plaintiff ceased his job search when he obtained employment at Axis. The plaintiff continued to work part-time for Diematic while employed with the defendant and after securing employment with Axis. No evidence was presented about the income earned by the plaintiff from part-time employment with Diematic.

[14] In the pleadings it was admitted that in March 2024, the plaintiff was thirty-five years old.

[15] Chris Hergott, an owner of the defendant along with Gord Jokic, stated that he met the plaintiff on April 26, 2023. The plaintiff told him that his current employer did not have enough work for him and he was only working part-time. The plaintiff said he was interested in working part-time for the defendant. In early June 2023, a decision was made by Gord Jokic, Dan Fleishman, another member of the management team and himself to offer part-time employment to the plaintiff. On June 19, 2023, the plaintiff began working part-time for the defendant being paid $28 an hour.

[16] On September 6, 2023 an offer was made to the plaintiff to work full-time with the defendant at an hourly rate of $35. The plaintiff agreed. At this time, the defendant was in need of another full-time machinist.

[17] In the fall of 2023, the defendant experienced a reduction in work coming from its two largest customers, ATS Automation and Magna International. Work from Magna which was expected to begin in February 2024 was delayed until at least September 2024. As a result of this reduction in orders, management at the defendant came to the conclusion that a reduction in workforce was required. Several employees were laid off, including the plaintiff.

[18] In cross-examination, Hergott stated that when he met with the plaintiff on April 26, 2023 the plaintiff was looking for part-time work and the defendant was looking for a full-time machinist.

[19] In cross-examination, Hergott testified that initially the plaintiff was offered a full-time position earning $30 an hour. He approved the increase in the hourly rate to $35. He stated that he did not recall the plaintiff saying he had been offered more than $30 an hour by Graham Jokic. He agreed with the suggestion that skilled machinists “hold all the cards”. The plaintiff was not required to complete a job application form and he was uncertain if the plaintiff had provided a resume.

[20] In re-examination, Hergott stated that Popovic was not an employee of the defendant.

[21] Catherine Taylor stated that she was employed in an administrative capacity with the defendant. She stated that at the time the plaintiff was hired, the defendant had a program in place which paid employees up to $1,200 for referring skilled machinists or tool and die makers to the defendant for employment.

[22] Taylor stated that she typed the termination letter to the plaintiff, which was approved by management. She attached to her trial affidavit internal sales figures of the defendant showing a decline in orders from ATS and Magna. Sales to ATS declined from $1,936,828 for the fiscal year

ending September 30, 2022 to $676,765 for the fiscal year ending September 30, 2023. For the five-month period from October 1, 2023 to the end of February 2024, sales to ATS were $353,902. Purchase orders from Magna totalling $1,661,500 were "put on hold" until at least September 2024 and possibly until early 2025.

[23] Graham Jokic stated that he first met the plaintiff on April 26, 2023, at which time the plaintiff advised that Diematic did not have enough work for him and he expressed an interest in working part-time for the defendant. Graham Jokic told the plaintiff that if he completed a Mastercam training program there might be a part-time position available. On May 10, 2023 Popovic sent a text message to Gord Jokic on behalf of the plaintiff advising that the plaintiff had completed training in Mastercam and inquiring if there was anything else he could learn.

[24] On June 8, 2023, Popovic again texted Gord Jokic advising that the plaintiff had been laid off by Diematic. On June 19, 2023, the plaintiff began working part-time for the defendant earning $28 an hour.

[25] Graham Jokic stated that in August 2023, he was advised by the plaintiff that he had been laid off by Diematic and had been issued a Record of Employment. He asked the plaintiff if he would like to work full-time for the defendant. The plaintiff said he was interested. The defendant initially offered the plaintiff full-time employment at an hourly rate of $30. The plaintiff said he was earning $35 an hour at Diematic. The defendant agreed to the plaintiff's wage demand and made an offer of employment dated September 6, 2023.

[26] Graham Jokic deposed that during 2023 the defendant experienced a reduction in sales to two of its largest customers. Because of this downturn in business, the decision was made to terminate the employment of the plaintiff. On February 2, 2024, Graham Jokic signed the letter terminating the plaintiff's employment.

[27] In cross-examination, Graham Jokic stated that, at the April 24, 2023 meeting, the plaintiff was looking for employment with the defendant. He told the plaintiff he would be considered for employment if he learned the Mastercam program.

[28] In cross-examination, Graham Jokic said he learned a couple of weeks before the trial that Popovic had business cards showing he worked for the defendant. He said however, that at no time was Popovic ever employed by the defendant. Graham Jokic agreed that he told the plaintiff that the defendant historically tried not to lay off employees. He denied holding out the prospect of the plaintiff becoming lead hand and he did not say that the plaintiff's future would be secure if he commenced employment with the defendant.

[29] In re-examination Graham Jokic testified that in 2023 the defendant had enough work to justify hiring another machinist.

[30] Neither party obtained an affidavit from Popovic and he was not called as a witness at the trial.

Analysis

[31] It is the position of the plaintiff that he was enticed by the defendant to leave his 14-year employment with Diematic to commence working with the defendant. It is the position of the plaintiff that the defendant knew its incoming orders had decreased and were continuing to decrease as of September 2023. Accordingly, the plaintiff accuses the defendant of acting in bad faith when he was hired to work full-time. Plaintiff submits that he ought to be entitled to damages equivalent to 15 months' employment income plus punitive damages of between $5,000 and $10,000.

Inducement

[32] The plaintiff's trial affidavit contains a significant amount of hearsay from Popovic. At the commencement of the trial, defendant's counsel stated that he did not object to the admissibility of this hearsay evidence and was content that the statements attributed to Popovic by the plaintiff be considered as evidence at the trial as proof of the truth of their contents.

[33] The plaintiff submits that an adverse inference should be drawn against the plaintiff because of the failure to call Popovic as a witness. I find there is no merit to the submission.

[34] Firstly, as a result of the concession made by counsel for the defendant, Popovic's evidence was before the court. It is reasonable to assume that the statements attributed to Popovic in the plaintiff's affidavit are as favourable or more favourable to the plaintiff than the evidence would have been if he had been a witness at the trial.

[35] Secondly, counsel for the plaintiff stated in final submissions that he overlooked the defendant's trial affidavits when they were served in advance of the pretrial conference. The defendant's trial affidavits were then re-served shortly prior to trial at the request of counsel for the plaintiff. No efforts were made by the plaintiff to obtain an affidavit from Popovic for the purpose of the trial.

[36] Thirdly, while I acknowledge that the plaintiff deposed, in his trial affidavit, that he was told by Popovic that he was employed by the defendant, the evidence of Hergott and Graham Jokic is that Popovic at no time was an employee of the defendant. I prefer the evidence of Hergott and Graham Jokic to the hearsay evidence of the plaintiff about what he was told by Popovic. The evidence includes a copy of Popovic's LinkedIn profile stating that he was an employee of the defendant but there is no evidence that any member of management at the defendant was aware of this LinkedIn profile. Popovic also had business cards which showed him to be an employee of the defendant. There is no evidence that anyone involved in the hiring of the plaintiff was aware, at the time, that Popovic was representing that he was employed by the defendant. There may be many reasons why Popovic would state, falsely, that he was an employee of the defendant.

[37] I do not accept the position of the plaintiff that his employment at Diematic was secure. His evidence was that he was concerned about Diematic closing or the owner of Diematic selling the business. During his tenure at Diematic he had been laid off five or six times. The opportunity to work overtime was no longer available at Diematic. Graham Jokic stated that it was the plaintiff who said he was interested in exploring other potential employment options. During the initial discussions with Graham Jokic, the plaintiff was told he would be considered for employment with the defendant if he learned the Mastercam program. He did so on his own initiative. This indicates he was anxious to improve his skills so as to make himself more employable by the defendant.

[38] The plaintiff began working part time for the defendant in June 2023 because he had been laid off by Diematic. When he was offered a full-time position, he was still on layoff. The initial offer of full-time employment to the plaintiff was at an hourly rate of $30. The plaintiff demanded $35 per hour to which the defendant agreed. This was not an inducement to an otherwise reluctant recruit to leave his current employment but was part of the negotiation process during which the plaintiff sought to increase his income by accepting an offer of employment from the defendant.

[39] In *Firatli v. Kohler Ltd. (c.o.b. Canac Kitchens)*, [2008] O.J. No. 2763, the following factors were suggested for consideration when determining if a terminated employee had been induced to leave previous employment:

> a) the reasonable expectations of both parties;
>
> b) whether the employee sought out work with the prospective employer;
>
> c) whether there were assurances of long-term employment;
>
> d) whether the employee did due diligence before accepting the position by conducting their own inquiry into the company;
>
> e) whether the discussions between the employer and prospective employee amounted to more than the persuasion or the normal "courtship" that occurs between an employer and a prospective employee;
>
> f) the length of time the employee remained in the new position, the element of inducement tending to lessen with the longevity of the employment; and,
>
> g) the age of the employee at termination and the length of employment with the previous employer. (para 52).

[40] The reasonable expectations of both parties were that there would be a long-term employment relationship. The plaintiff was seeking alternate employment options due to his concern about Diematic closing or being sold. The statement by Graham Jokic that the defendant did not lay off employees does not amount to an assurance of long-term employment. The plaintiff worked part-time for the defendant before accepting the offer of full-time employment. Discussions between the parties amounted to nothing more than the “usual courtship” by a prospective employer and employee. The plaintiff worked for the defendant for about eight months including the period of part-time employment. The plaintiff was 35 years old at the date of termination.

[41] Taking these factors into consideration, I come to the conclusion that the plaintiff was not induced to leave his employment with Diematic such that he should be entitled to an enhanced period of notice. This was a typical situation involving a prospective employee and employer who were mutually interested in entering into an employment relationship which they both thought would be beneficial.

Period of Notice

[42] The seminal case for determining the period of notice to which a dismissed employee is entitled is *Bardal v. The Globe and Mail Ltd.*, [1960] O.J. No. 149. At paragraph 21 the court stated:

> There can be no catalogue laid down as to what is reasonable notice in particular classes of cases. The reasonableness of the notice must be decided with reference to each particular case, having regard to the character of the employment, the length of service of the servant, the age of the servant and the availability of similar employment, having regard to the experience, training and qualifications of the servant.

[43] The plaintiff was a machinist. He was paid hourly. He was not a member of management. The plaintiff was a short-term employee. He was employed by the plaintiff on a full-time basis for less than six months and for less than eight months when his part-time employment is included. The plaintiff was 35 years of age at the date of termination. He quickly found alternate employment suggesting that other similar employment was readily available.

[44] The defendant referred to a number of cases involving employees in similar positions, of the approximate age of the plaintiff, with lengths of service ranging between 2.5 years and eight years. The periods of notice ranged between five and six months.

[45] Considering all of the circumstances of the present case, I find that a reasonable period of notice of termination of the plaintiff's employment is 12 weeks.

Punitive damages

[46] The plaintiff claims that the defendant acted in bad faith by hiring him at a time when sales were decreasing. The plaintiff points to the evidence of Taylor which included a summary of sales to ATS for the period October 1, 2021 to February 2024. For the fiscal year ending September 30, 2022 sales to ATS totalled $1,936,828 and for the fiscal year ending September 30, 2023 sales to ATS had decreased to $676,765.

[47] In January 2024, $1,661,500 worth of purchase orders to Magna were "put on hold" until at least September 2024 and possibly until early 2025. Hergott stated in his trial affidavit that the defendant expected work to begin on several Magna projects in early 2024. On January 19, 2024, he was advised by Magna that the anticipated work would not begin until early September 2024 at the earliest.

[48] Sales to ATS had decreased significantly at the time the plaintiff was hired. The delay in the anticipated work for Magna had not occurred. Total sales of the defendant was not presented in evidence. Hergott and Graham Jokic both stated in their trial affidavits that in August and September 2023 the defendant was looking for a full-time machinist. In cross-examination, Graham Jokic stated that when the plaintiff was hired, the defendant had sufficient work available. Hergott was not questioned about this topic in cross-examination.

[49] I find that no misrepresentations were made to the defendant. The plaintiff did not conceal from the plaintiff the fact that sales to one of its largest customers had decreased during the current fiscal year. There was no evidence that the plaintiff made any inquiries about the status of the defendant's sales. The defendant did not act maliciously before or at the time of termination. The letter of termination stated that the reason for the termination was a decline in sales. There was no evidence that the defendant interfered with the plaintiff's efforts to find alternate employment.

[50] I find that the plaintiff has failed to establish any entitlement to punitive damages.

Calculation of Damages

[51] Based on the above findings, I calculate the damages to which the plaintiff is entitled as follows:

12 weeks notice at $1,400 per week	$16,800
Mitigation income	
one week severance pay	$1,400
income earned from Axis at $1,200 per week	$10,800
Total damages	$4,600

The plaintiff is entitled to judgment against the defendant for damages for the wrongful termination of his employment in the total amount of $4,600 plus prejudgment interest.

Costs

[52] The parties are encouraged to resolve the issue of costs.

[53] If the parties are unable to agree on costs, they may make written submissions. Written submissions are to be limited to three pages exclusive of a Bill of Costs, Costs Outline and any relevant Offers to Settle and are to be filed electronically on Case Centre and delivered electronically to my attention to mona.goodwin@ontario.ca and Kitchener.SCJJA@ontario.ca. The plaintiff's submissions are to be submitted within 20 days of the release of these Reasons. The defendant's submissions are to be submitted within 40 days of the release of these Reasons. If written submissions are not submitted within 45 days of the release of these Reasons, it will be assumed that the issue of costs has been resolved and the file will be closed.

G.E. Taylor J.

Released: July 09, 2025

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