CITATION: Carroll v. Oracle Canada ULC, 2025 ONSC 4889
COURT FILE NO.: CV-23-00704741-0000
DATE: 20250826

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:		
STEVEN CARROLL	Plaintiff	*James Heeney and Emma Hrajnik* for the plaintiff
– and –		
ORACLE CANADA ULC	Defendant	*Richelle Pollard and Matthew Stanton* for the defendant
		HEARD: March 17, 2025, with supplementary written submissions on August 1 and August 11, 2025.

KOEHNEN J.

REASONS FOR JUDGMENT

[1] The plaintiff, Steve Carroll ("Mr. Carroll"), moves for summary judgment for damages arising out of the termination of his employment with the defendant Oracle Canada ULC ("Oracle").

[2] The parties agree that a motion for summary judgment is the appropriate way to dispose of the issues between them. Those issues and a summary answer to them are as follows:

a) What is the appropriate period of reasonable notice? Twelve months notice based on base salary plus commissions calculated on an average of the three years between June 30 2020 and June 30, 2023.

b) Is Mr. Carroll entitled to damages on account of his Restricted Stock Units? No. The plan in question unambiguously precludes a damage claim for loss of the Restricted Stock Units.

c) Is Mr. Carroll entitled to damages for lost benefits? Yes, calculated at 10% of his base salary.

d) Is Mr. Carroll entitled to damages for lost matching contributions to his RRSP? Yes, calculated at 6% of base salary as provided for in his employment contract.

e) Is Mr. Carroll entitled to punitive damages, aggravated damages, and/or damages on account of the Defendant's breach of the duty of good faith and fair dealing? Yes. Punitive damages are appropriate for Oracle's failure to pay Carroll his commissions during the statutory notice period as required by the *Employment Standards Act* and delaying those payments for 8 months without any explanation that withstands scrutiny.

I award punitive damages of $57,740.55 being an amount equal to the commissions that Oracle wrongfully withheld from Mr. Carroll.

A. Reasonable Notice

[3] The plaintiff submits that he is entitled to 12 months notice. The defendant submits he is entitled to between three and six months notice.

[4] The words of McRuer C.J.H.C. in *Bardal v. Globe and Mail* have been oft-repeated:

> "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."[1]

I review each of those factors below.

a. The Character of Mr. Carroll's Employment

[5] Mr. Carroll was employed as a Global Strategic Client Executive. Oracle described Mr. Carroll's role as follows:

> "…[he worked] exclusively with the TD Account. In particular, he was responsible for providing leadership to the sales and account management process, and for growing Oracle's revenues associated with the Oracle products for the account. Mr. Carroll was also responsible for developing and implementing business and account plans."[2]

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[1] *Bardal v. Globe & Mail Ltd.*, 1960 CanLII 294 (ONSC), at page 145.
[2] Defendant's Motion Record, Tab 1 at para 7.

[6] He earned a base salary of $180,000 plus significant commissions. In 2022, his T4 income from Oracle was $761,069.79. In 2021 it was $786,186.33. In 2023, Mr. Carroll was having an outstanding year. Between January 1, 2023 and his termination on June 30, 2023 he earned $725,674.08.

[7] Oracle submits that Mr. Carroll was simply a salesperson whose skills were readily transferable to other industries which ought to have made reemployment easier. Oracle relies on the following statement from *Husband v. Labatt Brewing Co*., in support of that proposition:

> Generally in "salesman" and "sales manager" cases the courts have consistently awarded notice in the range of 2.5 weeks per year of service even where the plaintiffs are in their 50s or 60s. The principle underlying this is the fact that the skills of sales employees are considered to be more readily transferrable, thus enabling them to secure new employment with relative ease.[3]

[8] The first word of the quotation is enough to dispose of the proposition. While it might "generally" be the case that salespeople have been awarded between two and 2.5 weeks of notice per year of service, that does not make it appropriate for all cases (although I am not necessarily agreeing with that proposition either). Although Mr. Carroll's skills are no doubt more broadly applicable than solely to TD Bank, his specialization in the financial services industry and income level nevertheless put him into a more rarefied category of employment. Courts have recognized that the more highly specialized the position, the longer it takes an

[3] *Husband v. Labatt Brewing Co.*, [1998] B.C.J. No. 3193 at para. 17.

employee to find appropriate replacement employment.[4] Courts have also noted that higher wage earners may take longer to find comparable employment at the same rate of remuneration because there are fewer of those positions available which may therefore justify a lengthier notice period.[5]

[9] The character of Mr. Carroll's employment therefore tends towards a longer notice period.

b. Length of Service

[10] Mr. Carroll commenced employment with Oracle in November 2019. His employment was terminated without cause as a part of Oracle's restructuring on June 30, 2023. His total length of service was three years and seven months.

[11] Courts have recognized that short service employees are often entitled to a proportionately longer period of notice. By way of example, in *Tsakiris v. Deloitte & Touche LLP* Justice Penny noted that:

> Comparing 'length of service' awards in other cases must be done with great care because, while length of service may be subject to mathematical precision, other relevant factors that must go into the determination of notice (i.e., the character of the employment and the availability of other employment) are not. Length of service, therefore, must not be given disproportionate weight.[6]

[4] *Dawe v the Equitable Life Insurance Company of Canada*, 2019 ONCA 512; *Paquette v. TeraGo Networks Inc.*, 2015 ONSC 4189; *Devlin v High Liner Foods Incorporated*, 2019 ONSC 6897.
[5] *Timmins v. Artisan Cells*, 2025 CanLII 2387 (ON SC) at para. 35; *Paquette v. TeraGo Networks Inc.*, 2015 ONSC 4189 at paras. 21-31; *Milwid v. IBM Ltd.*, 2023 ONSC 490.
[6] *Tsakiris v. Deloitte & Touche LLP*, 2013 ONSC 4207 at para 75.

[12] In *Timmins v. Artisan Cells,* Callahan J. awarded a 45-year-old employee with three years of service nine months of common law reasonable notice.[7]

[13] The shorter length of service here therefore tends towards a disproportionately longer notice period than the one-month per year of service guidepost that is sometimes used as a reference point.

c. Age

[14] Mr. Carroll was 61 years old at the time of termination.

[15] Courts have long recognized that it generally takes older employees longer to find comparable replacement employment than it does younger employees. In *Law v. Canada (Minister of Employment and Immigration)*, the SCC observed that:

> …the increasing difficulty with which one can find and maintain employment as one grows older is a matter of which a court may appropriately take judicial notice…
>
> Barring specific skills, it is generally known that persons over 45 have more difficulty finding work than others. [8]

[16] In *O'Dea v. Ricoh Canada Inc.*, the court stated with respect to a 57-year-old employee:

> …I approach this issue, in this case, on the basis that it is a matter of ordinary common sense that Mr. O'Dea's age makes him less marketable as a sales person, despite Mr. Davisson's opinion to the contrary, than if he were twenty, or even ten, years younger.[9]

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[7] *Timmins v. Artisan Cells*, 2025 CanLII 2387 (ON SC).
[8] *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497, 170 DLR (4th) 1 at para 101.
[9] *O'Dea v. Ricoh Canada Inc.*, 2016 BCSC 235 at para 19.

[17] The plaintiff points to the following cases of highly paid older employees with short service terms receiving in the range of 12 months notice:

Case	Age	Length of Service	Compensation	Notice
Schultz v. Canada Lands Company, 2019 ONSC 2124	58	3.8 years (Director of Real Estate)	----	12 months
Toole v Acres Inc., 2007 CarswellOnt 4331	61	4.7 years	$200,000.00	12 months
McLeod v 1274458 Ontario Inc., 2014 ONSC 1200	65	3 years	----	12 months
Campbell v Business Fleets, 1953 CanLII 155	--	3.3 years	----	12 months
Link v Venture Steel Inc, 2010 ONCA 144	37	7 years	$536,365.00	12 months
Davies v Canadian Satellite Radio Inc., 2010 ONSC 5628.	55	2 years	$362,000.00	12 months
Wright v Chilliwack Community Services, 2000 BCSC 972	56	3.5 years	$285,000.00	12 months
Farwell v Citair, Inc. 2014 ONCA 177	58	19 months	$130,000.00	12 months
Dimmer v MMV Financial Inc. 2012 ONSC 7257	50	4 years	$120,000.0+	12 months
Johnston v Household Financial Group, 1997 CanLII 12331	41	5 years	$102,000.00	12 months
Hrynkiw v Central City Brewers & Distillers Ltd., 2020 BCSC 1640	56	6.3 years	$118,492.76	12 months
Sollows v Albion Fisheries Ltd., 2017 BCSC 376	59	2.75 years	$160,000.00	10 months
Love v Acuity Investment Management Inc. 2011 ONCA 130	50	2.53 years	$633,548.00	9 months
Timmis v Artisan Cells, 2025 CanLII 2387	44	3.5 years	$476,000.00	9 months

[18] Oracle tries to distinguish these cases by noting that they involve primarily senior positions, often such as president or senior vice-president, and/or positions with significant managerial responsibilities.

[19] Oracle submits its own cases which it says are more consistent with the shorter notice period of between three and six months as follows:

Case	Age	Length of Service	Position	Notice
Deschenes v. Little Employment Group Inc., 2003 CanLII 7172	56	2 years and 4 months	Sales Employee	3 months
Lloyd v. Oracle Corp. Canada Inc., 2004 CarswellOnt 1717	60	3 years and 9 months	Regional Vice President	6 months
McGregor v. Atlantic Packaging Products Ltd., 2012 ONSC 2127	60	2.5 years	Sales Management	6 months
Samuel v. Benson Kearley IFG, 2020 ONSC 1123	61	3 years	Insurance Salesperson	6 months
Iriotakis v. Peninsula Employment Services Limited, 2021 ONSC 998	56	2 years and 4 months	Business Development Manager	3 months
Patterson v. SNC Group, 1986 CarswellOnt 4884	60	4 years and 6 months	Marketing Manager	7 months
Summers v. Oz Optics Limited, 2022 ONSC 6225	61	3 years and 6 months	Senior draftsperson	6 months
Ewach v. Whiteoak Ford Lincoln Sales Limited, 2021 ONSC 7206	61	19.5 months	Salesperson	2.5 months

[20] Significantly, Oracle omits from this table the employees' salary. Oracle's cases all involve relatively low-level sales employees who earned between $53,000 and

$75,000 per year.[10] Those salary levels would warrant lower notice periods because there are more such jobs available.

[21] Mr. Carroll's age therefore tends towards a longer notice period.

e. Alleged Failure to Mitigate

[22] Oracle submits that Mr. Carroll's notice period should be reduced because of what it says is his failure to mitigate.

[23] Oracle alleges that Mr. Carroll failed to mitigate his damages by not applying for several internal sales positions available during his 30-day working notice period. Oracle submits that, had he pursued and accepted one of these roles, he would have retained his annual base salary and target variable compensation, along with a performance-based plan offering potential earnings above target, consistent with his previous position.

[24] The onus of demonstrating that Mr. Carroll has not reasonably mitigated his damages rests with the employer. To meet that onus, Oracle must establish that: (1) Mr. Carroll has not taken reasonable steps to mitigate his damage; and that (2) had he taken those steps, he would have been able to secure a comparable position that reasonably corresponds with his abilities.[11]

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[10] *Deschenes v. Little Employment Group Inc*., 2003 CanLII 7172: $53,661.35; *Samuel v. Benson Kearley IFG*, 2020 ONSC 1123: $60,000.00; *McGregor v. Atlantic Packaging Products Ltd*., 2012 ONSC 2127: $75,000.00; *Iriotakis v. Peninsula Employment Services Limited*, 2021 ONSC 998: $60,000.00; *Summers v. Oz Optics Limited*, 2022 ONSC 6225: $75,000.00; *Ewach v. Whiteoak Ford Lincoln Sales Limited*, 2021 ONSC 7206: $60,000.00.
[11] *Link v. Venture Steel Inc.*, 2008 CarswellOnt 7102, [2008] O.J. No. 4849 (ONSC) at paras 45-46 aff'd in 2010 ONCA 144 at paras 71-74.

[25] The Court of Appeal has required affirmative evidence from an employer to support a finding of lack of mitigation.[12]

[26] Oracle's evidence in support of its allegation of failure to mitigate is found in paragraphs 36 and 38 of the affidavit of Sheryl Helsdon ("Ms. Helsdon"), sworn November 22, 2024. It states as follows:

> 36. Mr. Carroll's affidavit fails to mention that he was provided with various supports from Oracle to assist with his job search. In particular, Oracle provided Mr. Carroll with a 30-day working notice period in order to allow him to seek other opportunities within Oracle. I understand that Mr. Carroll was also provided with additional resources and given support by Oracle's recruiting team and his then manager, Chris Mallon to identify and apply for internal job postings. …
>
> 38. First, it is my understanding that Mr. Carroll was aware of a number of internal sales positions within Oracle that were available during his 30-day working notice period in June 2023 which he chose not to apply for. I understand that many of the other Key Account Sales Representatives who were impacted by the elimination of the Key Account Sales Representative role at the same time as Mr. Carroll were successful in finding new roles internally, and as a result avoided the termination of their employment. I also understand that if Mr. Carroll had applied and accepted one of these other internal sales roles, Oracle would have maintained his salary and annual target variable and he would have received a compensation plan with opportunities to earn above target for overachievement as he did with his role as Key Account Sales Representative V.

[27] Mr. Carroll denied knowing of any such opportunities on cross-examination.

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[12] *Lake v La Presse*, 2022 ONCA 742 at para. 28.

[28] In my view, Oracle has not met the burden of demonstrating that Mr. Carroll failed to mitigate his damages. The evidence of Ms. Helsdon quoted above is based on her "understanding." The basis of that understanding is not set out. Although Ms. Helsdon purports to say that Oracle had other positions available for Mr. Carroll, she does not identify even one such position; does not identify the salary or terms of employment of such positions; and does not identify the alleged supports that were made available to Mr. Carroll. Moreover, Oracle provides no evidence from Chris Mallon who allegedly identified internal positions and delivered job hunting support to Mr. Carroll.

[29] In those circumstances, the allegation of failure to mitigate is nothing but a bald assertion unsupported by affirmative evidence.

f. Absence of a Letter of Recommendation

[30] Mr. Carroll notes that Oracle did not provide him with a letter of reference. Failing to provide a positive letter of reference is recognized by Ontario courts as a factor that increases the length of an employee's reasonable notice period.[13]

[31] Oracle appears to take conflicting positions in this regard. On the one hand it says that its policy is not to provide letters of reference. On the other hand it takes the position that it provided Mr. Carroll with a letter "to assist in his job search efforts outside of the company." That letter states in full:

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[13] *Cuconato v. Parker Auto Care Ltd*., 2018 ONSC 2803, at para 33; *Ruston v. Keddco Mfg*. (2011) Ltd., 2018 ONSC 2919, at paras 105 and 109; *Nemirovski v. Socast Inc*., 2017 ONSC 5616, at para 12; *Williams Estate v. Vogel of Canada Ltd*., 2016 ONSC 342, at para 103.

> To Whom It May Concern:
>
> RE: Steve Carroll
>
> This letter will confirm Steve Carroll's previous employment with Oracle Canada ULC on a full-time basis between November 18, 2019 to June 30, 2023. Steve Carroll's most recent position was that of a Key Account Sales Representative V.
>
> Steve Carroll had an annual salary of $180,000
>
> Yours truly,
>
> [Name redacted]
> HR Representative
> [telephone number redacted]

[32] To suggest that this letter was written "to assist [Mr. Carroll] in his job search efforts outside of the company" is not credible. A letter of this sort is damning in an employee's search for a job hunt. It is the sort of letter that an employer would write for a mediocre or problematic employee in respect of whom an employer did not want to say anything proactively negative. Although Oracle maintains that it was company policy not to write letters of recommendation, the letter it did write does not indicate that company policy was not to write letters of recommendation. The letter would leave the reader with the impression that Mr. Carroll was at best a mediocre employee and not one who "earned above target for overachievement" as Oracle admits he did.

[33] The absence of a letter of recommendation therefore tends to a longer notice period.

g. Conclusion on Notice Period

[34] Mr. Carroll found alternative employment on February 28, 2024, eight months after his termination. I am nevertheless satisfied that the appropriate notice period here should be 12 months.

[35] Although Mr. Carroll found alternative employment after eight months, that position was another sales position which depended heavily on commissions. His monthly commissions between eight and 12 months after his termination from Oracle were understandably low and were as follows:

March 2024: $1,388.91;

April 2024: $7,291.67;

May 2024: $7,291.67; and

June 2024: $7,291.67.

[36] The goal of the common law notice period is not merely to provide notice until the employee can find any job, but to provide notice for the period of time reasonably necessary for employee to find comparable employment. Although Mr. Carroll found a roughly similar position within eight months, that position was not yet fully comparable. Depending on the nature of the position, it may not be realistic to expect an employee to earn immediately in a new position the same level of commissions he earned in his previous position. At an income level such as that enjoyed by Mr. Carroll, one could reasonably expect that it would take an employee

time to build new relationships to enable him to ramp up to the level of income he previously enjoyed. Reasonable notice can, depending on the circumstances, include that ramp-up period. In my view, Mr. Carroll has demonstrated that it is appropriate to have his notice include the first few months of employment at his new position during which he was earning materially less than at Oracle.

h. How to Calculate the 12 Months' Notice

[37] The next question that arises is how should the 12 months' notice be calculated in monetary terms?

[38] Mr. Carroll submits that the court should calculate the 12 months' of earnings based on the commission income of $579,447 that he earned during the first six months of 2023. That would result in commissions over a 12-month period of $1,158,894 plus base salary and any additional forms of compensation.

[39] Oracle relies on authorities like *Clark v. BMO Nesbitt Burns Inc.*,[14] where the Court of Appeal for Ontario held that using a three-year average is often appropriate for employees who earn a sizable portion of their income through commissions which may vary considerably from year to year. There are, however, other authorities which hold that more recent earnings are more appropriate to take into account

14 *Clark v. BMO Nesbitt Burns Inc.*, 2008 ONCA 663 (CanLII), 61 C.C.E.L. (3d) 268 at para. 35 see also: *Dimmer v. MMV Financial Inc.*, 2012 ONSC 7257 (CanLII), at para. 85; *Evans v. Paradigm Capital Inc.,* 2016 ONSC 4286 (CanLII) at para. 56..

where an employee's commission income was increasing or decreasing in the period prior to dismissal.[15]

[40] It is Mr. Carroll's position that his commissions on sales had been steadily increasing throughout his employment:

a. In 2020, Mr. Carroll's commission income was $261,778.68 based on his partial first year of employment.

b. In 2021, Mr. Carroll earned $502,438.48 in commissions.

c. In 2022, Mr. Carroll earned $478,756.72 in commissions.

d. In the first six-months of 2023, Mr. Carroll earned $579,447.00 in commissions.

[41] On the record before me, I am more inclined to use a three-year average. There was no information before me about the sales cycle on which Mr. Carroll's commissions were based. There was no information before me about the likelihood of Mr. Carroll duplicating in the second half of 2023 the same level of commissions that he earned in the first half of 2023.

[42] For example, there was no information indicating that Mr. Carroll had sales in a forward-looking pipeline that had been agreed to but in respect of which he had not yet earned commissions. Similarly, I have no information about the extent to which the purchase cycle for Mr. Carroll's products was or was not seasonal with more purchases being made early in the year. I also have no information about

15 *Clark v. BMO Nesbitt Burns Inc*., 2008 ONCA 663 (CanLII), 61 C.C.E.L. (3d) 268 at paras. 36-37.

the extent to which Mr. Carroll's sales in 2023 were influenced by isolated large outlier sales or whether they reflected a broadening of his relationships within TD that would likely continue throughout the balance of 2023.

[43] Given these uncertainties in the record, I am more inclined to use a three-year average than to assume that is commissions in the second half of 2023 would be the same as those in the first half of 2023. I therefore direct that Mr. Carroll's commission entitlement be based on the average commissions he earned during the three years preceding his termination on June 30, 2023. To avoid any doubt on the matter those are commissions that he earned between June 30, 2020 and June 30, 2023. If the parties cannot agree on that calculation they can approach me to determine the issue.

B. **Damages for Restricted Stock Units**

[44] In addition to base salary and commissions, Mr. Carroll participated in Oracle's Restricted Stock Unit ("RSU") Award Program for Oracle employees.

[45] In *Matthews v. Ocean Nutrition Canada Ltd.*, the Supreme Court of Canada established the following two-part test to determine whether an employee is entitled to damages in lieu of RSUs over the notice period: (1) would the employee have been entitled to the vesting of the RSUs as part of their compensation during

the reasonable notice period?; (2) If so, do the terms of the employment contract or bonus plan unambiguously take away or limit that common law right?[16]

[46] The next vesting for Mr. Carroll's RSUs was December 5, 2023. Since this vesting date falls within the 12 month notice period that I have awarded, I move to the second part of the *Matthews* test to determine if the employment contract or bonus plan unambiguously takes away or limits that common law right.

[47] In *Matthews* the Supreme Court of Canada noted that the critical analysis in this regard is not whether the RSUs stop vesting on termination but whether the employment contract or plan removes an employee's right to claim damages for the loss of any vesting rights during the notice period.[17] In my view, the terms of the plan here effectively preclude Mr. Carroll from claiming damages for the loss of any benefit associated with the RSUs.

[48] Section 11 of the Amended and Restated 2000 Long-Term Equity Incentive Plan Stock Unit Award Agreement For Employees Outside the U.S. provides, among other things:

> (vii) this Award and the Shares subject to this Award, and the income and value of same, are not part of normal or expected compensation or salary for any purpose including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end of service payments, bonuses, long-service awards, pension or welfare or retirement benefits (including the 401(k) Savings and Investment Plan and the Deferred Compensation Plan) or

[16] *Matthews v. Ocean Nutrition Canada Ltd.*, 2020 SCC 26 (CanLII), at para. 55 [*Matthews*].
[17] *Matthews v. Ocean Nutrition Canada Ltd.*, 2020 SCC 26 (CanLII), [2020] 3 SCR 64 at paras. 64-65.

> similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Company, the Employer or any Parent, Subsidiary or Affiliate;
>
> (xiii) no claim or entitlement to compensation or damages shall arise from forfeiture of this Award resulting from the termination of Participant's employment (for any reason whatsoever, whether or not later found to be invalid or in breach of employment laws in the jurisdiction where Participant is employed or the terms of Participant's employment agreement, if any), and in consideration of the grant of this Award to which Participant is otherwise not entitled, Participant irrevocably agrees never to institute any such claim against the Company, any Parent, Subsidiary or Affiliate or the Employer, waives the ability, if any, to bring any such claim, and releases the Company, any Parent, Subsidiary or Affiliate and the Employer from any such claim; if, notwithstanding the foregoing, any such claim is allowed by a court of competent jurisdiction, then, by participating in the Plan, Participant shall be deemed irrevocably to have agreed not to pursue such claim and agrees to execute any and all documents necessary to request dismissal or withdrawal of such claim;

[49] Mr. Carroll resists the application of these provisions by noting that he did not receive the terms of the plan until he was awarded the RSUs in December 2019; one month after he accepted employment with Oracle. That does not change my view of the matter. Mr. Carroll's employment agreement dated November 7, 2019 provides:

> Following your acceptance of this offer and commencement of employment with Oracle or its affiliates, a proposal will be submitted requesting approval to grant you an Oracle Corporation restricted stock unit for 2,200 shares of Oracle Corporation common stock ("RSU") pursuant to the Amended and Restated Oracle Corporation 2000 Long-Term Equity Incentive Plan (the " Plan"). If approved, **any RSU award will be issued pursuant to the Plan under a written agreement** and will be subject to qualification under all applicable securities regulations. As long as you remain

> continuously employed by Oracle or its affiliates, **you will receive 25% of the RSU shares per year, beginning one year after the RSU grant date, subject to the terms of a written RSU agreement** and your compliance with Oracle Corporation's Insider Trading Policy. You should consult your personal tax advisor if you have tax questions regarding your RSU. (Emphasis added)

[50] Whatever grant Mr. Carroll was being offered was clearly subject to the terms of a written RSU agreement which he had not yet seen. Although employees may be in a more vulnerable position than employers when it comes to negotiating the terms of agreements, I would find it difficult to accept that someone in Mr. Carroll's position is so vulnerable that he could not have asked for a copy of the RSU agreement before accepting a position with Oracle had the terms of that agreement in fact been important to him. As a practical matter it is highly unlikely that he would have been able to change any of those terms because Oracle would have a legitimate interest in maintaining a plan that had relatively equal application to all but perhaps the most senior executives.

[51] Although Mr. Carroll points to a series of cases which have awarded employees damages for the loss of RSUs during the notice period, the plans in those cases did not preclude the employees from claiming damages for loss of RSU benefits. Mr. Carrol's plan unambiguously excludes any claim for such damages.

[52] I note that in *Marazzato v Dell Canada Inc*.,[18] the court declined to award damages for loss of share benefits on language significantly weaker than the language contained in Oracle's plan.[19]

D. Benefits

[53] Mr. Carroll participated in Oracle's employee Benefits Plan. Employees are entitled to benefits continuation or damages in lieu thereof during the reasonable notice period.

[54] Courts have consistently approved awards for benefits equal to 10% of salary.[20]

[55] Mr. Caroll received extended benefits to September 22, 2023. Accordingly, Mr. Caroll is entitled to an award for benefits equal to 10% his base salary between September 23, 2023 and June 30, 2024.

E. RRSP Matching

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[18] *Marazzato v Dell Canada Inc*., 2021 ONSC 248 at para. 23 [*Marazzato*].
[19] In *Marazzato* the plan stated that it was: "not to be used for calculating any severance, resignation, redundancy, end of service payments, bonus, long-service awards, pension or retirement benefits or similar payments, and you waive any claim on such basis".
[20] *Andros v. Colliers Macaulay Nicolls Inc*., 2019 ONCA 679, at para 65; *Yee v Hudson's Bay Company*, 2021 ONSC 387 at para. 29; *Russell v. The Brick Warehouse LP,* 2021 ONSC 4822 at para. 68; *Halupa v. Sagemedica Inc*., 2019 ONSC 7411 at para. 23; *Ruston v Keddco Mfg. (2011) Ltd.*, 2018 ONSC 2919 at para. 117; *Dussault v. Imperial Oil Limited,* 2018 ONSC 4345 at para 52; *Nemirovski v. Socast Inc.*, 2017 ONSC 5616; *Beatty v. Best Theratronics Ltd.,* 2014 ONSC 3376.

[56] Employees are generally entitled to their entire remuneration package from employment during the reasonable notice period, including any matching RRSP contributions by employers.[21]

[57] Mr. Caroll contributed the maximum amount to his RRSP each year which Oracle managed to the 6% maximum prescribed in the Employment Agreement.

[58] Oracle relies on *Systad v. Ray-Mont Logistics Canada Inc*.[22] to argue that it was not obligated to make matching contributions after the plaintiff ceased contributing post-termination. I do not accept that interpretation. In *Systad*, the issue concerned the employee's entitlement to a refund of pension contributions. The court ordered the return of the employee's own contributions, but not the employer's, based on clear plan language stating that, upon termination within two years, the refund was limited to amounts "which arose from the Member's contributions only."

F. Punitive Damages

[59] The plaintiff claims punitive damages on the basis that his commission of $57,740.55 was not paid during the statutory notice period as required and was only remitted eight months later, on February 29, 2024.

[21] *Taggart v. Canada Life Assurance Co*., 2005 CarswellOnt 491 (Ont. S.C.J.), at paras 25-58.
[22] *Systad v. Ray-Mont Logistics Canada Inc.,* 2011 BCSC 1202

[60] During her cross-examination, Oracle's affiant, Sheryl Helsdon, took the position that Oracle could not pay Mr. Carroll's commission because it did not have the information necessary to make the payments. The plaintiff asked for and received the following undertaking in that regard:

> … confirm how the amounts owing under the Employment Standards Act were calculated? What information was used to support those calculations? When the payments Ms. Helsdon referred to were made to the company and any other particulars on why the payment to Mr. Carroll was delayed?

[61] Oracle provided the following response in its answers to undertakings:

> At the time his employment was terminated, Oracle provided Mr. Carroll with 4 weeks of working notice, inclusive of the required 3 weeks pursuant to the ESA. Following the termination of his employment, Mr. Carroll was provided with payments on July 15, 2023 and August 15, 2023 representing commissions earned prior to the date of termination. When Oracle realized that the commissions earned by him were not accounted for as part of the ESA notice period, it issued a payment to Mr. Carroll in the amount of $57,740.75 in February 2024. This amount represents 3 weeks of Mr. Carroll's variable compensation earned (in the amount of $230,962.99) in the 12 weeks preceding the termination of his employment. No amounts were deducted from this total to account for the 4 weeks of working notice Mr. Carroll received.

[62] That answer to the undertaking does not support Oracle's position that it was missing information at the time of Mr. Carroll's termination which prevented it from calculating his commission entitlements. Indeed, the answer suggests that Oracle had the information it required to pay the commissions but simply did not do so for eight months without any explanation for that failure.

[63] In addition, Oracle took the position that it was not required to pay Mr. Carroll anything more than his statutory entitlements pursuant to his employment agreement even though a similarly worded employment agreement involving another Oracle employee had been struck down as unenforceable in *Nasser v Oracle Global Services*.[23] Oracle maintained that position until January 31, 2025, shortly before the plaintiff's factum was due. Again, all without explanation.

[64] This is not a case of Oracle seeking to distinguish an adverse court decision. Rather, Oracle adopted a legally untenable position against a former employee. In the absence of any other explanation, the only reason I can see for maintaining such a position is to try to force a financially vulnerable employee into a less favourable settlement position.

[65] Mr. Carroll submits that this conduct was a breach of Oracle's duty of good faith, because the Company knew or ought to have know that his commissions were payable during the statutory notice period and that the termination provision in the Employment Agreement had already been found to be unenforceable by this court.

[66] Courts have been prepared to award punitive, aggravated and moral damages in favour of employees based on the circumstances surrounding the termination of employment. Such awards have been made where the employer's conduct is "unfair or is in bad faith by being, for example, untruthful, misleading or unduly

[23] *Nasser v Oracle Global Services*, 2022 ONSC 5401.

insensitive" or where the employer's "conduct is meant to deprive the employee of a pension benefit or other right."[24]

[67] Such awards recognize that it is that the time of termination of their employment that employees are most vulnerable and are most in need of protection.[25]

[68] Oracle's conduct had the effect of depriving the plaintiff of $57,740.75 in commissions for over eight months. It also had the effect of telling the plaintiff that it was limited to its statutory notice when Oracle knew or ought to know that this was not the case. As many courts have noted, employees do not have equal bargaining power with employers and are in a significantly more vulnerable position in the employer employee relationship.

[69] When an employer seeks to take advantage of that power imbalance after termination when an employee is in one of the most financially vulnerable positions he or she is likely to be in, courts are justified in awarding aggravated damages to act as a disincentive to other employers from engaging in similar conduct in the future.

[70] In the absence of any true reason for depriving the plaintiff of his commission entitlements at the time of his life when he most needs them, an award of damages

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[24] *Honda Canada Inc. v. Keays*, 2008 SCC 39 at paras 57- 59.
[25] *Wallace v. United Grain Growers Ltd.*, 1997 CanLII 332 (SCC), [1997] 3 S.C.R. 701 at para. 95.

must be sufficiently high to his incentivize employers from engaging in such conduct.

[71] Damages in such cases have taken the form of moral, aggravated or punitive damage awards. Moral damages generally require some sort of evidence of damages for harm such as mental distress. Aggravated damages are also intended to be compensatory. Punitive damages, on the other hand are intended to punish the defendant's behaviour and deter similar misconduct. They are only awarded in exceptional cases.[26] The conduct required to attract punitive damages has been described as malicious, oppressive, arbitrary, and high-handed that offends the court's sense of decency.[27] To award punitive damages in a contract dispute, such as a wrongful dismissal action, requires an independent, actionable wrong. A breach of the duty of good faith amounts to such an independent actionable wrong.[28] In my view, failing to pay statutory entitlements when due without explanation and maintaining an untenable position that no common law notice is required without explanation when a court has already ruled that the contract in question requires common law notice both constitute breaches of the duty of good faith in contractual performance and warrant punitive damages.

[72] Punitive damages must be proportional and remain rationally connected to the underlying goals of retribution, denunciation and deterrence.[29] In the wrongful

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[26] *Halupa v. Sagemedica Inc.*, 2019 ONSC 7411 at para. 31 citing: *Ruston v. Kedco*, 2018 ONSC 29; *McIntyre v. Grigg (2006)*, 2006 CanLII 37326 (ON CA), 83 O.R. (3d) 161 (C.A.), at para. 59.
[27] *McIntyre v. Grigg (2006)*, 2006 CanLII 37326 (ON CA), 83 O.R. (3d) 161 (C.A.), at para. 60.
[28] *Halupa v. Sagemedica Inc.*, 2019 ONSC 7411; *Galea v. Wal-Mart Canada Corp.*, 2017 ONSC 245 at para. 282.
[29] *Halupa v. Sagemedica Inc.*, 2019 ONSC 7411 at para 32.

dismissal context, it is also necessary to assess the degree of vulnerability of the plaintiff, as well as the harm or potential harm directed to him.[30]

[73] In *Teljeur v Aurora Hotel Group* ("*Teljeur*"),[31] the court awarded $15,000 in moral damages for the employer's failure to reimburse the plaintiff for expenses of $16,680.03 which the employer admitted was owing. In *Pohl v. v. Hudson's Bay Company* ("*Pohl*"),[32] Centa J. awarded $45,000 in moral damages and $10,000 in punitive damages for withholding statutory entitlements of $40,000 for approximately three months.

[74] The awards of moral damages in both *Teljeur* and *Pohl* came close to 100% of the amount at issue. In my view a punitive award equal to approximately 100% of the amount at issue provides an adequate level of denunciation and disincentive to deter others from engaging in such conduct in the future.

[75] Mr. Carroll seeks a punitive damages award of "at least $45,000". I award punitive damages of $57,740.55, equal to the amount of the improperly withheld commissions.

[76] Awarding punitive damages equal to 100% of the amount at issue with respect to common would, in my view, result in an award that is disproportionately high in the circumstances of this case. As noted above, in the wrongful dismissal context an

[30] *Halupa v. Sagemedica Inc.*, 2019 ONSC 7411 at para. 32.
[31] *Teljeur v Aurora Hotel Group*, 2023 ONSC 1324.
[32] *Pohl v. v. Hudson's Bay Company*, 2022 ONSC 523.

award of punitive damages also requires the court to assess the vulnerability of the plaintiff and the degree of harm directed toward him. As a high income earner, Mr. Carroll would generally speaking be less vulnerable than a lower income earner in the sense that he is more likely to have capital reserves and savings to see him through a period of unemployment than would a lower income earner and would therefore be less susceptible to the pressure to agree to an improvident settlement. In addition, as a higher income earner, Mr. Carroll also had greater ability to retain counsel whom he could pay either on an hourly basis or, if counsel were acting on a contingency, counsel could be fairly certain of a contingency fee that would give them the confidence to pursue the matter to trial. As a result, it strikes me that any sanction for maintaining the enforceability of the employment agreement in the face of a contrary court decision is a matter that is more appropriately addressed when dealing with costs.

Conclusion and Costs

[77] As a result of the foregoing I award Mr. Carroll damages for wrongful dismissal equal to the sum of:

(a) Twelve months of his base salary of $180,000.

(b) Benefits, calculated at 10% of his base salary for 8 months, of $12,000

(c) Twelve months' commission payment calculated based on the average annual commissions Mr. Carroll earned between June 30, 2020 and June 30, 2023.

(d) RRSP contributions equal to 6% of his base salary or $10,800

(e) Less one month of working notice of $15,000

(f) Less commissions paid for the statutory notice period of $57,740.75

(g) Less mitigation income of $83,825.38

[78] If the parties encounter any difficulties in agreeing on the proper calculation of damages, they can approach my judicial assistant for a case conference.

[79] In addition, I award Mr. Carroll punitive damages in the amount of $57,740.55.

[80] Any party seeking costs arising out of these reasons will have three weeks to deliver written submissions. The responding party will have two weeks to deliver its answer with a further one week for reply.

Koehnen J.

Released: August 26, 2025

CITATION: Carroll v. Oracle Canada ULC, 2025 ONSC 4889
COURT FILE NO.: CV-23-00704741-0000
DATE: 20250826

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

STEVEN CARROLL

Plaintiff

– and –

ORACLE CANADA ULC

Defendant

REASONS FOR JUDGMENT

Koehnen J.

Released: August 26, 2025