

# Temporary Layoffs Of Professionals Hired On A Yearly Basis May Terminate Their Employment Contracts

July 04, 2018

In its 2016 decision in *Groupe Lelys c. Lang* ("Lelys"), the Québec Court of Appeal seemed prepared to allow employers to temporarily suspend employees, even when their employment contracts contained no clause providing for such temporary layoffs. In that case, the Court of Appeal held: [translation] "laying off for economic reasons is a **current and accepted practice in Québec.**" For more information on this judgment, please read our April 2017 bulletin, "[The Legality of Temporary Layoffs in Light of Decisions Recently Rendered in Québec and in Ontario.](#)"

Recently, the Superior Court revisited this question in its decision in *Stepanian c. Réseaux sans fils Calamp inc.* (2018 QCCS 611) ("Stepanian"). In this case, the employer, facing a slowdown in its operations, was obliged to temporarily layoff three of its professional employees, who had been hired to work on a year-to-year basis. This occurred shortly after a decision was made to relocate them. Several months later, the affected employees filed an action before the Superior Court against their former employer, on the grounds that they had been constructively dismissed.

One of the issues the court had to determine was whether the temporary layoff of the employees concerned consequently terminated the employment relationship between the parties.

The Superior Court determined that the employment of the three employees in question **had been terminated by the employer's decision to lay them off temporarily.** The court concluded that because the employees were not obliged to accept any substantial change in their working conditions that would result in their being relegated to a "passive availability" status, entailing suspension of their on-the-job performance and thus the loss of their salaries.

Additionally, the court drew an important distinction between the layoff of those three professional employees, who had been hired on a yearly basis, and who had never before experienced any shortage of work, and laying off hourly-paid workers performing **their tasks in a cyclical marketplace.** Contrary to the facts in *Groupe Lelys*, in which the laid off employee had been warned before being hired about the uncertain nature of the

employment, the cyclical, temporary layoff of the employees involved in the Stepanian case was not provided for in their working conditions.

Consequently, moving forward, it will be even more important for employers to consider including a clause permitting temporary layoffs in their employee contracts to avoid action that may be taken in a difficult economic or administrative situation from being found to be tantamount to constructive dismissal.

By

[Maude Longtin](#)

Expertise

[Labour & Employment](#)

---

## BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](#)

### BLG Offices

#### Calgary

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

#### Ottawa

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

#### Vancouver

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

#### Montréal

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

#### Toronto

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.