# Shortening wrongful dismissal battles: lessons from Lee v ITW

**How employers can limit wrongful dismissal risk when claims drag on for years**

*Zack Lebane*

By Stacy Thomas

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A recent Ontario supreme court decision shows how the dismissal of a short-tenure employee can remain in active litigation more than a decade after the employment relationship ended.

The underlying employment at issue lasted only about a year, yet the litigation has stretched across more than a decade through motions, amendments and scheduling challenges.

## Managing “small” wrongful dismissal claims

In the decision, *Lee v ITW Canada Inc., 2026*, the judge refused to dismiss the wrongful dismissal action for delay, restoring it to the trial list with a strict timetable after many years of procedural steps.

The outcome underscores that a file that looks modest in monetary terms can still consume significant management time and legal resources if it is not resolved early. For Zack Lebane, employment lawyer with Sherrard Kuzz, the case should prompt employers to take a closer look at whether apparently "small" terminations are being triaged thoughtfully, including realistic assessments of risk and cost.

"There is no way to 100 percent preclude a former employee from commencing a lawsuit against their former employer – anyone can start a lawsuit," Lebane says.

"The quickest way to shorten or avoid litigation is through settlement, even if for a nominal amount. However, that is sometimes easier said than done."

Lebane's point reflects a tension HR sees regularly: the desire to stand on principle versus the practical benefits of an early resolution.

In a case where the dismissed individual has already shown a willingness to pursue multiple avenues, even a limited settlement can be cheaper than a drawn-out defence. At the same time, leaders need to weigh potential precedent, workplace optics and whether settling will prompt similar claims from others.

## Spotting when a case will become protracted

A related labour decision in 2016 dismissed a health and safety reprisal complaint because it was filed more than 11.5 months after dismissal and the applicant could not provide a credible explanation for the delay. In those circumstances, the employer was prejudiced by fading memories and the departure of a key manager.

The decision described how earlier steps, including demand letters and a human rights complaint, made no mention of health and safety reprisal, leaving the employer without timely notice of those allegations.

From an HR perspective, that ruling highlights how delay can work in different ways, how new allegations can be layered onto an existing claim over time through amendments, adding discrimination, toxic workplace and other issues to what began as a straightforward dismissal dispute.

For HR, a growing list of complaints and multiple active files can be a signal to revisit strategy, including whether an earlier, structured settlement discussion could cap the exposure.

"In terms of warning signs that something will be protracted, it can sometimes be hard to tell at the outset," Lebane says.

"You may get a sense by how many issues are raised by the plaintiff, the nature of the issues and whether they are frivolous, and the number of forums. … Another thing to look for is whether the plaintiff is represented by counsel. Often, though not always, an unrepresented plaintiff will be unfamiliar with the rules, which could result in more drawn-out proceedings."

## Documentation and evidence preservation

Both decisions emphasize, in different ways, the importance of contemporaneous notes and proactive evidence preservation. In refusing to dismiss the wrongful dismissal action, the court pointed out that the employer could have created memos or notes at the outset to preserve recollections, and that key evidence already existed through discovery transcripts, even as a principal witness's health declined.

In the labour forum, by contrast, the employer successfully argued that delay had made it harder to gather memories and evidence about earlier conversations and events.

“For the world of HR, the importance of keeping of good notes can’t be over-stated,” says Lebane.

“In any termination, especially but not only, one for cause, an employer should keep any and all documentation related to the reasons for termination. This includes any voice or video recordings … an employer will want to be able to demonstrate the decision to dismiss the employee was wholly unrelated a protected ground or previous complaint.”

He adds that a disciplined approach at the front end of a dispute can help an employer defend itself effectively if the claim survives, or demonstrate prejudice convincingly even after an extended time.

Therefor, legal holds should be implemented quickly, including securing digital and physical evidence and funnelling it to counsel where appropriate, and identifying current and former employees who may be witnesses so their recollections can be preserved early.: “In every case, the greater the documentary or other hard evidence to support the reasons for termination, the better.”