Published on *The National Law Review* https://natlawreview.com

Ontario Court Reaffirms Importance of Clear and Compliant Language in Employment Agreements

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In December 2024, the Court of Appeal for Ontario released its highly anticipated decision in *Dufault v. Ignace (Township)*. The three-judge panel determined that the "for cause" termination clause contained in the employee's employment agreement was unenforceable because it did not comply with the minimum standards set out in the Employment Standards Act, 2000 (ESA). The panel dismissed the employer's appeal and ordered the employer to pay damages to the employee for wrongful dismissal.

Quick Hits

- The Court of Appeal for Ontario highlighted three key points in *Dufault v. Ignance (Township)*: the ESA is intended to protect employee interests; courts should interpret termination of employment clauses such that employers comply with the ESA; and the *wording* of termination clauses will determine that interpretation.
- The court also held that if the termination clause in an employment agreement does not comply with the ESA *when it is entered into* by the parties, this error will not be remedied by the employer's subsequent compliance, at the time of termination.
- The court's ruling may serve as a reminder for employers to consider reviewing their employment agreements to ensure that the language in the termination provision is clear and complies with the ESA.

Dufault v. Ignace (Township)

This case pertains to the "without cause" dismissal of an employee whose employment was subject to the terms of a fixed-term employment agreement. When her employment was terminated, the employee received her minimum termination entitlements pursuant to the ESA. The employee filed a claim against her employer, seeking damages for wrongful dismissal and damages for the length of the fixed-term agreement. The employee claimed that the termination provision contained in her employment agreement was illegal and unenforceable because it did not comply with the minimum standards set out in the ESA. The employer argued that the employment agreement was in compliance with the ESA, and that the employee received the damages to which she was entitled.

The termination provision read as follows:

> 4.01 The Township may terminate this Agreement and terminate the Employee's employment *at any time and without notice or pay in lieu of notice for cause. If this Agreement and the Employee's employment is terminated with cause, no further payments of any nature, including but not limited to, damages are payable to the Employee*, except as otherwise specifically provided for herein and the Township's obligations under this agreement shall cease at that time*. For the purposes of this agreement, "cause" shall include but is not limited to the following*:
>
> (i) *upon the failure of the Employee to perform the services as hereinbefore specified without written approval of Municipal Council and such failure shall be considered cause and this Agreement and the Employee's employment terminates immediately*;
>
> (ii) in the event of acts of wilful negligence or disobedience by the Employee not condoned by the Township or resulting in injury or damages to the Township, such acts shall be considered cause and this Agreement and the Employee's employment terminates immediately without further notice. (Emphasis added by the court.)

The issues in this case were initially heard during a summary judgment motion. The motion judge determined that the "for cause" and "without cause" termination clauses were both unenforceable because they were contrary to the minimum standards in the ESA.

On appeal, the employer reiterated its argument that the termination clauses complied with the ESA, and they submitted that if the "for cause" termination clause was found not to comply with the ESA, this clause should be severed from the agreement, and the "without cause" termination clause should be maintained because this was the clause applicable to the termination. Had the court accepted the argument that the noncompliant portions of the termination provision be severed, the court would be opting to break the precedent it set in *Waksdale*,when it held that termination provisions should be read as a whole.

Decision

The court's decision focused on the "for cause" termination clause. The court agreed with the motion judge's conclusion that the "for cause" termination clause did not comply with the minimum standards in the ESA because its definition of "cause" was broader than the definition provided in the *Ontario Regulation 288/01*.

The termination provision at issue was unenforceable because the "for cause" termination clause had the effect of broadening the parameters of a "for cause" termination, while also lowering the standard of misconduct from the standard of wilful misconduct, set out in the regulation. Therefore, the "for cause" termination clause purported to deprive employees of notice or pay in lieu of notice, under circumstances not captured under the ESA and its regulation.

Keeping with the *Waksdale* decision, the court concluded that the "for cause" termination clause rendered the entire termination provision unenforceable.

Next Steps

The Court of Appeal for Ontario's ruling may serve as a reminder for employers to review their employment agreements to ensure that the language in termination provisions is clear and complies with the ESA. Where there is ambiguity or a failure to comply with the ESA, Ontario courts will favour an interpretation of a termination provision that protects employee interests, even if the actual termination was conducted in a manner that complied with the ESA.

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National Law Review, Volume XV, Number 7

Source URL:https://natlawreview.com/article/ontario-court-reaffirms-importance-clear-and-compliant-language-employment