

Alberta Court Upholds Termination Provision Providing 4 Weeks' Termination Notice



In *Lawton v Syndicated Services Inc.*, 2022 ABPC 3, the Provincial Court of Alberta upheld a termination provision, which provided 4 weeks' notice of termination.

Background facts

The employee, Mr. Lawton, was employed as the chief operating officer of the employer for 20 months until the termination of his employment in April 2020. When Mr. Lawton began employment in 2018, the employer's business was thriving. The Court noted that Mr. Lawton was unhappy in his former employment and saw an opportunity to join the employer. In discussions with the employer, Mr. Lawton negotiated the terms of his employment contract, including elements of his compensation and the termination provision, which provided 4 weeks' notice of termination. By contrast, employment contracts of other managers of the employer provided two weeks' notice of termination.

The Provincial Court of Alberta noted that the employer was a small business that had been operating at a significant loss during the past two years due to the state of the economy and due to the COVID-19 pandemic. While the business had struggled prior to the COVID-19 pandemic due to the state of the economy, it especially declined during the pandemic, which led to Mr. Lawton's termination. When Mr. Lawton was terminated without cause, the employer provided him his contractual entitlement of 4 weeks' pay in lieu of notice. Mr. Lawton brought a claim for severance pay, benefits, and enhanced damages.

The Court's ruling

The Court dismissed Mr. Lawton's claim and upheld the term of Mr. Lawton's employment contract, providing 4 weeks' notice of termination.

The Court reiterated that it is well-established that a termination provision that provides less than statutory minimum notice of termination is unenforceable. To reach its conclusion in this case, the Court relied on the following facts:

- The parties had negotiated the terms of the employment contract, including the termination provision;

- The employment contract provided for more than the minimum requirements for termination under the Alberta *Employment Standards Code*; and
- In this case, 4 weeks' notice of termination exceeded the one week of statutory minimum termination notice to which Mr. Lawton would be entitled for his length of service.

The Court stated the following at paragraph 42: "The employment contract had the term 'Termination of this contract requires 4 weeks' notice'. This term is clear and unambiguous. Parties are entitled to negotiate terms of employment contracts and where the terms do not interfere with statutory requirements they ought to be enforced..."

Key takeaway

This is an Alberta lower court decision, which illustrates the Court's strict interpretation of contract terms where there is evidence that the parties negotiated the terms and the terms comply with the minimum standards of employment legislation. The Court does not speculate in respect of the possibility that the contractual termination notice entitlement of 4 weeks' notice may provide less than the statutory requirement had Mr. Lawton been employed for a longer period.

Notably, this decision contrasts with decisions in other jurisdictions, such as Ontario, in which courts [have broadly interpreted termination clauses](#) in the employment agreement to find that the termination clause is unenforceable and leading to the employee's entitlement to common law reasonable notice of termination.

This decision may be employer-friendly, but it remains to be seen whether the decision will be appealed.

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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