B.C. Court Of Appeal Endorses A "Practical, Common-Sense Approach" To The Interpretation Of Termination Clauses

In a landmark decision, the British Columbia Court of Appeal clarified that simply referencing employment standards in terminations provisions is enough to override the common law presumption of reasonable notice – offering an employer a clear path for drafting enforceable contracts.

In *Egan v Harbour Air Seaplanes LLP*, 2024 BCCA 222, the B.C. Court of Appeal provided welcome confirmation that a termination provision that incorporates employment standards minimum notice periods by reference, without any other special language, is sufficient to demonstrate that the parties agreed to displace the common law presumption of reasonable notice of termination. This result favours the employer, providing guidance for drafting termination provisions and clarifying when a termination provision will or will not be enforced by the B.C. Courts.

At common law, employees are *presumptively* entitled to reasonable notice, or pay in lieu of reasonable notice, when they are terminated without cause. Reasonable notice is calculated in reference to the employees' personal characteristics including, among other things, their age and length of service with the employer. Reasonable notice can extend well beyond the eight-week maximum found in most employment standards legislation.

However, the presumption of reasonable notice can be rebutted by a termination provision in an employee's contract. Termination provisions can provide for as little notice as required by applicable employment standards legislation, which is typically significantly less than common law reasonable notice.

The *Egan* decision concerned an employee who was terminated without cause in 2020 by Harbour Air. Harbour Air falls under federal jurisdiction and to which *Canada Labour Code* (the "Code") employment standards apply. The employer provided only the minimum amount of pay in lieu of notice required by the Code. In turn, the employee argued that the following termination provision was ambiguous and did not definitively limit the notice required to the Code minimums:

"The Harbour Air group may terminate your employment at any time without cause so long as it provides appropriate notice and severance in accordance with the

requirements of the Canada Labour Code [emphasis added].”

Whether language like that underlined above is sufficient to rebut reasonable notice has been the subject of significant litigation across Canada. The B.C. Court of Appeal held that the reference to employment standards legislation alone is clear enough to displace the reasonable notice presumption. A termination provision only has to clearly provide for “some other period of notice” to rebut reasonable notice. Applying a common-sense approach, the reference to employment standards legislation is enough. Unlike other provinces, in B.C. the termination provision does not also need to clearly state the parties’ intention to limit the employee’s notice entitlement to the *minimum* notice period allowed under the legislation.

Key takeaways

While *Egan* provides helpful guidance for drafting termination provisions, employers should still be cautious when drafting termination provisions and seek guidance to ensure that the presumption of reasonable notice has been displaced.

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.

Authors: Lynsey Gaudin, Graham Christie, Paul Jeronimo

MLT Aikins LLP