

British Columbia Court Of Appeal Takes The Practical Approach To Interpreting Termination Provisions



The British Columbia Court of Appeal recently released its decision in [*Egan v Harbour Air Seaplanes LLP*](#)¹ where the court provided helpful commentary regarding the enforceability of termination provisions in the province and under the *Canada Labour Code*. The court distinguished decisions reached in Ontario and took a practical approach to contractual interpretation.

What Happened?

The employer in this case is a federally regulated business governed by the *Canada Labour Code*. The employee served the employer as Vice President, Maintenance for slightly less than three years. His employment was terminated without cause on March 30, 2020, due to a downturn in business caused by the COVID-19 pandemic.

The employment agreement between the parties contained the following provision:

“The [employer] 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*.”

Upon termination, the employer paid the employee two weeks of salary in lieu of notice and five days of severance pay in accordance with the *Canada Labour Code*, as stipulated by the employment agreement.

The employee brought an action for wrongful dismissal, claiming reasonable notice at common law. In the summary trial, the employee argued that the termination clause was unenforceable because it did not define with certainty his termination entitlement and was therefore ambiguous.

The trial judge found that the termination clause was not ambiguous and sufficiently rebutted the application of common law reasonable notice, and consequently dismissed the employee’s action. The employee then appealed the decision.

What Did the Court of Appeal Decide?

The Court of Appeal dismissed the employee's application and upheld the conclusion of the trial judge, but did so for different reasons and by applying a different approach to contractual interpretation.

The Court of Appeal held that the parties' intentions must be assessed by applying a practical, common-sense approach to contractual interpretation based on the time the parties entered into the contract. Specifically, the court stated that a termination clause that clearly shows an intention to incorporate notice provisions of the applicable employment standards legislation, should be sufficient to displace the presumption. Further, the Court of Appeal found that employers may provide termination clauses that convert the statutory minimums into a floor but also may create enforceable termination provisions by simply incorporating the requirements of the applicable employment standards legislation.

In the circumstances, the court concluded that at the time the employee entered into the agreement he knew his termination entitlements would be governed by the *Canada Labour Code*. In addition, the language of the termination clause clearly incorporated the notice and severance requirements of the *Canada Labour Code*, and evidenced an intention to displace common law notice.

The court acknowledged that the interpretation of termination clauses and the necessary language to displace the entitlement to common law notice is a matter of controversy across Canada. The court was careful to establish that its decision does not resolve the conflicting authorities on interpretation of termination provisions across the country.

The court did not rely on conflicting caselaw from Ontario. Instead, it distinguished between the language in employment standards legislation in jurisdictions like BC (and under the *Canada Labour Code* to some extent) which provides prescriptive notice, and legislation which requires "at least" minimum notice (as in Ontario).

The decision stands in stark contrast to recent decisions reached in Ontario. The British Columbia Court of Appeal specifically rejected the employee's argument that ambiguity could be found in the termination clause by focusing on the words "at least" in the relevant provision of the *Canada Labour Code*; it preferred to read the contract as a whole in the context of the circumstances at the time of execution. In contrast, in February of this year, an Ontario court found that a termination provision in an employment agreement was unenforceable for including language that an employer could terminate "at any time" and in its "sole discretion", which the court reasoned would inferentially allow termination in circumstances contrary to the *Ontario Employment Standards Act, 2000*.²

Takeaways

This is a favourable decision for employers in British Columbia and provides some wanted clarity. The Court of Appeal's reasoning will feature heavily in the drafting and interpretation of termination provisions going forward. However, it also creates further distinction between the enforceability of termination provisions in certain jurisdictions in Canada.

The decision is a timely reminder that employers should be reviewing their employment agreements and termination clauses for all the jurisdictions in which they operate to ensure that they are not ambiguous.

Footnotes

1. 2024 BCCA 222

2. You can read more about this decision in our article here: [Ontario Judge Finds Another Way to Void Termination Provision in Employment Contract](#).

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: [Leslie Whittaker](#), [Andrew Gould](#)

Fasken