Employers Win: Supreme Court Dismisses Application For Leave To Appeal Case On Termination For Frustration Of Contract



Bottom Line

On December 19, 2024, the Supreme Court of Canada dismissed an employee's application for leave to appeal a decision of the Ontario Court of Appeal, which held that an employment contract was frustrated when the employee did not comply with a mandatory vaccination requirement imposed by the employer's main client. The frustration of contract doctrine may be invoked to terminate an employment contract on a "no fault" basis where an unforeseeable event renders the employer and employee unable to fulfill the terms of the employment contract. If an employment contract is frustrated, the employee is not entitled to notice of termination or pay in lieu.

The Supreme Court of Canada's refusal to grant leave to appeal confirms that the doctrine of frustration is alive and well in Canadian employment law. The employer in this case was successfully represented by Filion Wakely Thorup Angeletti LLP lawyers, Evan Campbell and Catherine Phelps.

Background and Court Decisions

As we wrote previously in our website article on the Ontario Court of Appeal decision, the Appellant was employed as a systems technician by VuPoint Systems Ltd. ("VuPoint"), a company that provides residential satellite and smart home installation services for Bell Canada and Bell Express Vu ("Bell"). The vast majority of VuPoint's work is done for Bell. Bell implemented a COVID-19 vaccination policy requiring all of its subcontractors to be fully vaccinated against COVID-19. The Appellant did not comply with Bell's policy, so VuPoint had no work to offer the Appellant. VuPoint terminated the Plaintiff's employment on the basis that the employment contract had been frustrated.

The Appellant commenced an action for wrongful dismissal and brought a motion for summary judgment. The motion judge dismissed the Appellant's wrongful dismissal action. On May 7, 2024, in *Croke v. VuPoint System Ltd.*, the Ontario Court of Appeal upheld the motion judge's decision, noting that Bell's policy was an unforeseen event over which VuPoint had no control. The Court held that in these circumstances VuPoint was entitled to treat the contract as frustrated, and end it on a "no fault" basis.

The Appellant sought leave to appeal the decision of the Ontario Court of Appeal. The Supreme Court of Canada denied leave to appeal, with costs awarded to the employer. This ends the saga, as the Supreme Court of Canada is the country's highest court and no further appeal exists. The Supreme Court of Canada does not usually release any reasons for its leave decisions, and did not do so here.

Takeaway

The *VuPoint* case confirms that an employer may terminate an employment contract without notice where an unforeseen third-party requirement is imposed on the employer that prevents the parties from fulfilling the terms of the employment contract. While frustration applied in this case in the context of an employee's refusal to comply with a mandatory third-party vaccination requirement, the doctrine may equally apply where an employee does not have a license or other qualification required to perform the duties of their position.

We encourage Canadian employers to keep the doctrine of frustration in mind when considering the possible end of an employment relationship, as it allows employers to immediately end an employment contract without notice on a "no fault" basis.

We recommend that employers consult counsel before relying on this doctrine.

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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