Federally Regulated Employers: Time To Review Employment Agreements After Ontario Court Strikes Down Termination Clause

As we approach the end of the first quarter of 2026, it is a good time for employers in Canada to update and review workplace policies and precedents, including template employment agreements to ensure they remain current and meet all legislated requirements. This is especially so for employers subject to the *Canada Labour Code* (CLC)in light of the Ontario Superior Court of Justice's decision in *Ghazvini et al. v Canadian Imperial Bank of Commerce*, which was released towards the end of 2025.

Ghazvini is the first time a court has applied the landmark decision in *Waksdale v Swegon North America Inc.* to strike down a termination clause in an employment agreement under the CLC. It is also the first decision in the federally regulated context to consider the recent decision in *Dufault v The Corporation of the Township of Ignace* and subsequent decisions, further impacting termination provisions in Ontario.[1]

The *Ghazvini* decision confirms that the *Waksdale* analysis is not confined to employment agreements of employees governed by Ontario's *Employment Standards Act, 2000* (ESA); rather, *Waksdale* can extend to termination clauses in agreements of employees governed by the CLC. The decision is consistent with the general approach courts in Ontario have taken to closely scrutinize termination clauses to ensure strict compliance with minimum statutory standards.

Of concern for provincially regulated employers outside of Ontario, the decision in *Ghazvini* may be seized upon by employee counsel in other jurisdictions seeking to apply *Waksdale* beyond Ontario and resulting in a proliferation of wrongful dismissal claims.

A Brief Refresher on *Waksdale*

In the landmark *Waksdale* decision (as summarized in our earlier blog post, here), the Ontario Court of Appeal confirmed that an employment agreement must be interpreted as a whole. The correct approach is to consider whether the termination clauses in the agreement, read as a whole (including the *with* and *without* cause provisions), violate the ESA. If any part of any of the termination clauses violates the ESA it is illegal and all termination clauses in the agreement are void and unenforceable, regardless of whether the employer relied on the offending part.

Although not reproduced in the case, the termination clause at issue in *Waksdale* was along the lines of what was once a commonplace termination with cause in Ontario employment agreements: "if you are terminated for cause, you will not be entitled to payments of any kind". The court in *Waksdale* found the clause to be offside the ESA as it permitted terminating an employee without notice or payment of any kind for "cause", which is a lesser standard than that imposed by the ESA (i.e., non-trivial wilful misconduct, disobedience or wilful neglect of duty).

As result, the without cause clause in the employment agreement was rendered unenforceable even though the employee was not terminated with cause. The court also refused to give effect to the severability clause in the agreement. The result was that the employee in *Waksdale* was entitled to common law notice, significantly increasing the employer's severance costs.

The fallout of the *Waksdale* decision was swift and dramatic: the majority of termination clauses of provincially regulated non-union employees in Ontario were deemed unenforceable overnight and a wave of wrongful dismissal litigation ensued (and continues).

The *Ghazvini* Decision

In *Ghazvini*, the with cause termination clause in the employment agreements of two federally regulated employees was also at issue in so far as it permitted the employer to terminate employment at any time without notice or pay in lieu for "Cause". While "Cause" was not explicitly defined in the agreements, examples of conduct that amounted to "Cause" were identified in the clause, including, "dishonesty", "failure to perform duties in a satisfactory manner" and a "breach of any other term or condition of employment".

Under the CLC, statutory minimum payments on termination are due unless there is "just cause" for termination. Ultimately, the court in *Ghazvini* found that the with cause clause violated the CLC because it included examples of conduct that would not necessarily rise to the level of "just cause" under the CLC; as such, the clause allowed for terminations without notice in circumstances where the CLC prohibits it. As a result, like in *Waksdale*, the without cause clauses in the agreements were also rendered unenforceable and the employees were entitled to common law notice.

The court still considered the enforceability of the without cause clause on its own. That clause provided that the company could terminate employment "at any time without Cause". In doing so, the court briefly reviewed the recent line of cases in Ontario where the phrase "at any time" and/or "for any reason" (or similar language) in a without cause termination clause has been interpreted as being offside the ESA, and later as being permissible and not presumptively offside the ESA. Ultimately, the court did not determine whether the without cause clause was unenforceable for using "at any time" language because the with cause clause was unenforceable (rendering the entire clause unenforceable).

The court's *obiter* commentary on the issue of "at any time" language is revealing—the court confirmed that telling a federally regulated employee that their employment can be terminated "at any time" is "even more misleading under the CLC than it is under the ESA" given the heightened requirements under the CLC for a valid termination.

Lastly, the court held that the savings provision in the employment agreements, which was intended by the company to ensure that the employees received their statutory minimum entitlements in the case of a discrepancy or invalidity, could not be relied upon to cure the drafting deficiencies.

Key Takeaways

The *Ghazvini* decision signals that courts are ready to apply the same rigorous lens to federally regulated employment contracts that has reshaped provincial employment law in Ontario. For employers governed by the *Canada Labour Code*, this marks a shift in how termination clauses in their employment contracts may be interpreted and enforced.

In addition, while the impact of *Waksdale* has been felt by provincially regulated employers in Ontario for some time now, similar reasoning may be applied to termination clauses for employees in other provinces, having regard to the applicable employment standards legislation of those provinces. This risk would seem highest in Nova Scotia and in Newfoundland and Labrador where the employment standards legislation has a similar "cause" definition as Ontario's employment standards legislation.

Given this evolving legal landscape, employers across Canada, whether federally or provincially regulated, should consider reviewing their template employment agreements to ensure that all termination clauses are clearly drafted and compliant with relevant legislation before onboarding new hires.

For existing employees, a signing bonus, salary increase or other new incentive can be used to get those employees to sign new agreements with updated termination clauses. Related to this, federally regulated employers in Canada are reminded that the CLC was amended in February 2024 to provide for enhanced statutory notice of termination entitlements that increase based on continuous years of service, up to a maximum of eight weeks.

Employers in all provinces should take proactive steps to address these issues now to help reduce the risk of future disputes, provide greater certainty of enforceability and limit severance costs.

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