

Ongoing Obligations: How Failure To Comply With Termination Provisions Can Lead To Common Law And Punitive Damages



A recent decision from the Supreme Court of British Columbia (the “Court”) in the case of *Klyn v. Pentax Canada Inc.*, 2024 BCSC 372 (“*Klyn v. Pentax*”) serves as a reminder for employers of the importance of adhering to contractual termination provisions, even after employment has ended.

In *Klyn v. Pentax*, the Court found that an employer’s failure to comply with the contractual termination terms negotiated with the employee, which had language limiting the employer’s termination obligations, amounted to repudiation of an employment agreement. This resulted in an award of common law reasonable notice and punitive damages.

Repudiation

Repudiation occurs where one party breaches a fundamental contractual term or behaves in a manner that demonstrates a clear intention to no longer be bound by the contract. Should the other party accept the repudiation, the contract is terminated and both parties are released from their future obligations to one another. In the employment context, repudiation of an employment agreement may result in the inability to rely on the employment agreement in future disputes, including otherwise valid termination provisions.

Background to the Decision

Brad Klyn worked for Pentax Canada Inc. (“Pentax”) as an independent contractor. In 2007 he transitioned to a permanent role with Pentax in which he was initially paid commission, but later also received a salary.

The written employment agreement between Mr. Klyn and Pentax (the “Agreement”) provided that if Pentax terminated Mr. Klyn’s employment without cause, he was entitled to receive the greater of:

- his entitlements under the British Columbia *Employment Standards Act*; or
- working notice or payment in lieu of notice equal to four weeks per completed year of service prior to signing the Agreement, plus four weeks under the Agreement, to a maximum of 18 weeks.

The Agreement further provided that payment in lieu of notice could be paid as salary continuation, calculated based on the average of Mr. Klyn's commission earnings in the two years preceding termination, and subject to Mr. Klyn's duty to mitigate (the "**Salary Continuation**").

Pentax terminated Mr. Klyn's employment without cause in 2022 and paid Mr. Klyn the Salary Continuation; however, Pentax's payments to Mr. Klyn included only his salary, not commission earnings. Pentax also provided Mr. Klyn with a termination letter which purported to impose new conditions on Mr. Klyn, including:

- the obligation to report his efforts to find new employment each month, including the disclosure of any job offers received; and
- the requirement to sign a release of all claims before receiving his contractual termination pay.

Pentax later indicated that non-compliance with the reporting requirement could lead to the cessation of the Salary Continuation, and Pentax ceased all payment to Mr. Klyn after three months.

Mr. Klyn brought a claim against Pentax alleging Pentax repudiated the Agreement by failing to provide him with his without cause termination entitlements and by imposing additional conditions on those entitlements.

The Decisions

At summary trial, the Court determined that Pentax's failure to make the required payments under the Agreement amounted to repudiation. Consequently, the Court chose not to rely on the Agreement's termination provision. Instead, the Court awarded Mr. Klyn common law damages of eighteen months' pay in lieu of reasonable notice, calculated based on the average of his earnings over the two years preceding the termination.

The Court further found Pentax's conduct to be oppressive, egregious, and reprehensible. Not only did Pentax's termination letter imply that Mr. Klyn's termination entitlements were contingent on the signing of a broad release, but Pentax had also deliberately failed to compensate Mr. Klyn according to its own understanding of the Agreement. Given this breach of good faith, the Court awarded Mr. Klyn punitive damages of \$25,000.

Key Takeaways for Employers

Klyn v. Pentax demonstrates the need for employers to adhere to their contractual termination obligations to employees, as non-compliance may lead to repudiation of the entire employment agreement and liability for common law reasonable notice.

In addition, the decision reminds employers that a release of claims post-termination must offer the former employee something of value beyond what they are already entitled to. Employers should therefore be mindful when drafting release clauses to ensure that any post-termination release provides additional consideration.

To view the original article click [here](#)

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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