Ontario Court Of Appeal Reinforces Importance Of Clear Language In Employment Contracts



In *De Castro v Arista Homes Limited*[1], the employee in question was terminated without cause after being employed with Arista Homes Limited for four years and nine months. Relying on the provision in the employment contract for termination without cause, she received four weeks' salary in lieu of notice on termination.

The employee's employment contract contained a termination clause that permitted dismissal "for cause", including "breach of employment agreement." The employee argued that the termination for cause provision in the employment contract fell afoul of the Ontario *Employment Standards Act, 2000* (the "*ESA*"), and, as such, the termination without cause provision must be struck out.

The motion judge agreed with the employee and found that the termination clause was unenforceable. The inclusion of "breach of employment agreement" in the clause as grounds for dismissal was found to have expanded the definition of "cause" beyond the scope of the *ESA*, which permits termination without notice only in cases of wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the employer.

What Did the Court Decide?

The Ontario Court of Appeal affirmed the motion judge's ruling. In maintaining that the termination provision was unenforceable, the Court of Appeal emphasized that the provision contemplated that the employee could be terminated without notice either "for Cause" **or** because the employee "[had] been guilty of wilful misconduct, disobedience, breach of Employment Agreement or wilful neglect of duty that is not trivial and has not been condoned […]". In the Court of Appeal's view, those reasons contemplated termination for acts and omissions that did not justify termination under the *ESA*. For example, the contract contemplated termination for cause based on "a breach of [the] Employment Agreement", but did not require that any such breach be either wilful or serious.

The Court of Appeal referenced the motion judge's consideration of the final sentence of the clause, which defined "Cause" by saying that it "shall include … involvement in any act or omission which would in law permit" termination without notice. The motion judge noted the words "shall include" suggest that the definition is not

exhaustive and that circumstances other than those specified could be relied on to justify a termination without notice.

The Court of Appeal framed the issue as not whether the contract purported to comply with the law, but whether the language in the contract actually did comply with the law.

Key Takeaways

This decision reinforces the principle that the actual language of the contract, rather than the employer's intent, determines enforceability. Termination clauses must adhere to the definitions and limitations in the *ESA* .

De Castro also reinforces the established principle that the *ESA* is "remedial legislation" and "intended to protect the interests of employees". Therefore any ambiguity or overbreadth in termination clauses will be interpreted in favour of the employee.

Employers should keep in mind that vague or overly broad terms in an employment agreement may lead to legal risk, including having to provide common law reasonable notice, which often goes beyond the minimum requirements set by the *ESA*.

Footnote

1. https:/www.canlii.org/en/on/onca/doc/2025/2025onca260/2025onca260.html?resultId=8373ae68918a42f9bd664f4e3197ce11&searchId=2025-05-23T10:54:13:912/18662c4bf1b1414da19094228f94f3cd&searchUrlHash=AAAAAQAYYXJpc3RhIGhvbWVzICYgZGUgY2FzdHJvAAAAAA

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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