



Court of Appeal Says Mistakes In Termination Provisions May Not Void Agreements

Since the early 1990's Ontario courts have been steadily providing decisions that state that termination clauses in employment contracts must contain all of an employee's entitlements in order to be effective. Indeed, it has been established law that simply failing to include that an employee is entitled to her benefits throughout the notice period can be fatal to the clause, and expose an employer to having to grant further notice. However, on June 28, 2016, the Ontario Court of Appeal upheld a decision by the Superior Court substantially limiting an employee's ability to plead that ambiguous termination provisions are unenforceable.

In October of last year, Mr. Justice Sean F. Dunphy of the Ontario Superior Court caused a stir by upholding the Defendant employer's termination provision despite the fact that it did not contain all of the aspects of remuneration the terminated employee was entitled to throughout his notice period. Dunphy J. stated that regardless of the fact that the clause could potentially result in situations where it would be in violation of the Employment Standards Act, 2000 ("ESA"), that was not the situation of the parties. He relied heavily on the context the contract was created in, and stated that the words and conduct of the parties exhibited a clear intention to limit the plaintiff's entitlements to the ESA minimums.

The Court of Appeal gave great deference to Dunphy J's decision in upholding it. They stated that it was clear he had considered the argument of the former employee (the same argument that had been relatively clear law), but that he had also rejected it when considered in the circumstances. However, the Court of Appeal did not go any further. While they certainly didn't support the series of cases that had made up the law on this point to date, they also chose to not reject them outright.

So, where does that leave the law? A little murkier than before. The decision seems to protect against sophisticated parties pleading ignorance and semantics when faced with the consequences of an unfavourable agreement. However, this decision also reinforces how important every word in a termination provision can be, and how important it is for both employers and employees to seek professional advice when drafting or agreeing to a contract to make sure it properly represents their intentions.

If you have any questions or have a termination provision that could use reviewing, please contact us at (416)-646-5169.

