

Member's Quarterly

Winter 2026 Edition

Feature

A Principled Approach to Employment Interpretation

Act with good faith when claiming just cause

In the recent Alberta decision, the Court of King's Bench held that failing to successfully establish a just cause defence will not preclude an employer from later relying on an otherwise enforceable without cause termination clause.



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Background

The relevant facts of the case were as follows:

- The Plaintiff Employee was initially approached by the Defendant Employer in November 2012 to commence employment.
- Over the next year, the Defendant repeatedly approached the Plaintiff with various offers of employment, but the parties were unable to agree on terms.
- In September 2013, the Plaintiff ultimately accepted an offer of employment made by the Defendant. Following that, the Employer issued the Employee a formal employment contract. Upon reviewing the proposed employment contract, Mr. Singh requested various amendments, which were all subsequently agreed to by the Employer.
- In early 2019, the Employer's new President broached termination with the Employee, and the parties agreed the Employee's last day of employment would be September 30, 2019.
- In December 2019, the Employee initiated litigation against the Employer in respect of his termination of employment. In the Employer's filed defence, it took the position that it had just cause for the Employee's dismissal; however, these allegations were ultimately removed from its defence in July 2020.

Court Decision

Several issues were before the Court, including whether the termination provision in the Employee's employment contract was enforceable, and if so, whether the Employer had repudiated the employment contract by either alleging just cause in bad faith or by failing to provide the Employee his contractual entitlements after termination.

In reviewing the termination provision, the Court concluded that it was sufficiently clear and unambiguous to displace the implied term requiring the Employer to provide reasonable common law notice of dismissal. In doing so, the Court also held that even if there was ambiguity, the principle of *contra proferentem* would not apply as the Employee was a knowledgeable and sophisticated executive who had managed to negotiate various changes to the Employer's proposed terms of employment, including specifically the termination provision itself (and there was no power imbalance or inequality in bargaining power between the parties).

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Having rejected the Employee's argument that the termination provision was ambiguous, the Court then assessed whether the Employer had repudiated the employment contract by either alleging just cause in bad faith or failing to pay the Employee his 90-day contractual termination entitlements after his termination. In response, the Court provided a comprehensive overview of the related case law and held as follows:

[92] An employer's failure to establish just cause will not disentitle the employer from enforcing an otherwise valid without cause termination provision provided the allegations of just cause are made in good faith: *Simpson v Global Warranty*, 2014 ONSC 6916 at para 8.

[93] In my reading of the authorities surveyed in *Humphrey*, provided there is a good faith basis for the employer to allege just cause, both at termination and during litigation, an employer who subsequently decides not to pursue just cause or is unable to prove just cause, is not precluded from relying on a without cause termination provision.

[94] The good faith requirement means the allegation of just cause cannot be brought dishonestly or for an improper, dishonest, or fraudulent purpose.

Accordingly, the Court held that although the Employer failed to establish that it had just cause to dismiss the Employee, its just cause allegations and defence had not been advanced improperly or in bad faith. As such, it was not precluded from relying on the enforceable termination provision in the Employee's employment contract to limit his termination entitlements at trial. To this end, the Court capped the Employee's award for pay in lieu of notice at 90 days.

Takeaways

This decision is helpful as affirming the proposition that a failed just cause defence will not automatically prevent an employer from relying on an otherwise valid without cause termination provision.

This decision also serves as a reminder that where individuals actively negotiate the terms of their employment agreement with an employer, particularly where they can be characterized as being "knowledgeable and sophisticated," such activity will likely serve to decrease the likelihood of the principle of *contra proferentem* applying. That concept interprets ambiguities against the interests of the contract drafter. It is often applied to give employees the benefit of the doubt when interpreting any ambiguous provisions.

Finally, this decision reminds employers of the need to act with good faith when claiming just cause for termination.

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