

Member's Quarterly

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Feature

Ontario Superior Court of Justice: Right to Terminate Without Notice

New hope for employers for "Just Cause" termination provision

In a breath of fresh air for employers, the Ontario Superior Court of Justice recently rendered a notable decision in *Rahman v Cannon Design Architecture Inc.*, 2021 ONSC 5961, which held that "just cause" termination provisions may not always be void and that the validity of such a provision may depend on the factual situation.

The Facts

On February 16, 2016, the plaintiff, Ms. Rahman, entered into an employment agreement with the defendant, Cannon Design Architecture Inc. ("Cannon"). Prior to finalizing her employment, Cannon provided Ms. Rahman with an offer letter that outlined the specific details of her offer of employment, as well as an "Officer's Agreement" which provided a more generalized policy document.

The termination provisions in the Officer's Agreement and the offer letter varied, however, the letter stated that in the event of a discrepancy between the two documents, the offer letter prevails. The offer letter stated "Cannon Design maintains the right to terminate your employment at any time and without notice or payment in lieu thereof, if you engage in conduct that constitutes just cause for summary dismissal." Further, the offer letter stated that the payments Ms. Rahman was to receive on termination would be no less than the minimum amounts required under the *Ontario Employment Standards Act, 2000* (the "ESA") even if the Officer's Agreement might purport in some circumstances to provide for a lower payment.

Prior to accepting the offer of employment, Ms. Rahman sought independent legal advice with respect to the offer letter and specifically the termination provisions. Further, Ms. Rahman negotiated various elements of her employment with the defendant prior to accepting the position. While some of Ms. Rahman's proposed changes were not implemented, Cannon did amend the offer letter to include an enhanced benefit of two months' notice in the event of termination by the Company within the first five years of employment, conditional upon receipt of a release.

Due to COVID-19, Cannon instituted enterprise-wide lay-offs and salary reductions, which resulted in a 10% reduction of Ms. Rahman's salary, beginning on April 6, 2020. On April 30, 2020, Ms. Rahman's employment was terminated. No cause was alleged and a new hire replaced Ms. Rahman's position.

The Plaintiff's Position

Ms. Rahman sought a summary judgment and argued that the termination provision of this employment agreement "is entirely unenforceable because the 'just cause' termination provision would permit termination without notice in circumstances broader than those contemplated by the ESA." Given the issue with the 'just cause' termination provision, Ms. Rahman argued that the entire termination clause was void and unenforceable.

The Decision

The court held that the offer letter provided clear and unambiguous terms in two separate sentences and that the minimum ESA standards would be upheld. Further, the court noted that if any discrepancies existed between the offer letter and the Officer's Agreement, the former should govern, which signaled again that at the very least the minimum ESA standards are required. Additionally, the Court was reluctant to find the termination clause void, given that Ms. Rahman entered into this contract with a relatively equal bargaining



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Feature continued

position and received independent legal advice that explained differences between the Officer's Agreement and the offer letter.

Takeaways for Employers

Although the court signaled that "just cause" terminations are not always detrimental to an employment agreement, this decision has already received judicial criticism, and may not be applicable in all situations given the unique facts of this dispute. However, this decision is significant because it raised three key points for employers to consider when drafting and engaging with termination clauses in employment contracts.

First, this decision signaled that not all employment agreements that include "just cause" language in termination provision are, in themselves, detrimental to an otherwise valid termination provision. In deciding whether to uphold such a termination provision, the court may look to the sophistication of the parties, whether independent legal advice was obtained, and whether the provisions meet or exceed ESA standards.

Second, as noted above, employers should consider an employee's ability to receive independent legal advice prior to engaging in an employment agreement. Ms. Rahman's decision to receive legal advice played a significant role in saving the "just cause" provision within the offer letter. Specifically, since Ms. Rahman did receive legal advice and negotiated elements of her employment agreement, the court noted that any inequity in bargaining power between the parties was equalized.

Finally, this decision signalled that courts are willing to move towards true contract principles in employment disputes and that the courts are able to reject arguments that a just cause termination provision attempts to contract out of the ESA.

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