

Member's Quarterly

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Feature

Ontario Court of Appeal: Rahman Overturned

Employment agreements must meet minimum ESA requirements

On June 8, 2022, the Ontario Court of Appeal released its much-anticipated decision in *Rahman v Cannon Design Architecture Inc.*, 2022 ONCA 451. In doing so, the Court overturned the Ontario Superior Court's finding that the validity of a "just cause" termination provision could depend on the factual context. The three-judge panel unanimously concluded that an unenforceable "just cause" termination provision would not be saved by subjective considerations or by the employee's level of sophistication.

Facts

In February 2016, the plaintiff, Ms. Rahman, entered into an employment agreement with the defendant, Cannon Design Architecture Inc. ("CDAI"), after having sought legal advice and having negotiated several elements of her employment. There were two employment contracts: an Offer Letter and an Officer Agreement. The Offer Letter provided that it would prevail in the event of a conflict with the Officer Agreement.

Both employment contracts included a "just cause" provision. The Offer Letter provision stated that no notice was to be given if there was a just cause to terminate, whereas the Officer Agreement provision stated that the employee would receive one month's notice in the case of a termination for cause. Since the two provisions were conflicting, it was determined that the just cause provision in the Offer Letter would govern the termination of Ms. Rahman's employment.

In April 2020, Cannon terminated Ms. Rahman's employment without notice and without cause. Ms. Rahman claimed damages against CDAI, Cannon Design Ltd., and The Cannon Corporation ("Respondents") for wrongful dismissal. She sought a declaration from the Court that the termination clauses were void because they conflicted with the *Employment Standards Act* ("ESA"), and that the respondents were her common employers.

Motion Court Decision

The Motion Judge concluded that the termination clauses were valid based on its interpretation that their wording would uphold ESA minimum standards. It also took into consideration the fact that Ms. Rahman sought independent legal advice prior to contracting into the employment agreements, and the fact that she had relatively equal bargaining power when she entered into the contract. The Court also concluded that CDAI alone was Ms. Rahman's employer and not the respondents. It therefore dismissed the action against Cannon Design and The Cannon Corporation.

Court of Appeal Decision

On appeal, the Court of Appeal had to determine whether the Motion Judge erred in concluding that the termination provisions were valid, and in concluding that the respondents were not all Ms. Rahman's employers. The Court found that the termination provisions contained in Ms. Rahman's employment contract were void and unenforceable since they did not comply with the ESA. In doing so, the Court also held that the Motion Judge should not have taken into consideration Ms. Rahman's level of sophistication, nor the fact that independent legal advice was sought prior to finalizing the employment contract.



Dan Palayew
LL.B.
Partner,
Borden Ladner
Gervais LLP



Odessa O'Dell
J.D.
Associate,
Borden Ladner
Gervais LLP

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With regard to the common employer issue, the Court found that the respondents were in fact Ms. Rahman's employers since they were identified as such in the Officer Agreement, and since they had a significant role in establishing Ms. Rahman's compensation. Based on the common employer doctrine, the Court also concluded that there was sufficient evidence to show that the respondents had the intention of being an interrelated corporate group and that they had exercised enough control over Ms. Rahman's employment to be considered common employers.

Takeaways for Employers

This decision confirms that the courts are closing the door on the possibility of using contract principles in employment disputes. Any attempt to contract out of the ESA will be at the employer's risk.

Here are a few key takeaways employers should consider when drafting and engaging in termination clauses in employment contracts:

First, this decision confirms that the factual context is not relevant when determining if a termination clause is enforceable. Evidence related to the parties' subjective intention, their level of sophistication, or whether or not they are receiving legal advice prior to contracting into the employment agreement will not save a termination provision that contravenes the ESA.

Rahman is also a reminder that the Court's decision in *Waksdale v Swegon North America Inc.*, 2020 ONCA 391 prevails in the context of employment disputes. That is, an employment agreement must adhere to the ESA's minimum requirements; otherwise, the entire termination clause could be invalid. This reiterates that termination provisions are often read together as a whole in their plain wording when courts are assessing their enforceability.

To ensure that their employment agreements meet the applicable legislative minimum requirements, employers should draft all contractual provisions carefully and have their employment contracts reviewed regularly by a lawyer. Being vigilant and drafting enforceable provisions will prove to be the best tool for employers to avoid potential costly legal procedures.

Finally, *Rahman* is a reminder that each corporate entity in an interrelated corporate group exercising control over an employee's employment may be held jointly and severally liable for the employee's potential termination rights.

Dan Palayew is Partner/Regional Leader, Labour & Employment Group with Borden Ladner Gervais LLP and can be reached at dpalayew@blg.com.

Odessa O'Dell is a Senior Associate with Borden Ladner Gervais LLP and can be reached at oodell@blg.com.