



e2r Alert!

Ontario Court Strikes Down Another Termination Clause...This Time Including New Reasoning

In a recent case, *Dufault v. The Corporation of the Township of Ignace*, 2024 ONSC 1029, the Ontario Superior Court relied on a new argument regarding the validity of a termination clause in a fixed-term employment contract.

Ultimately, it was found that the termination clause did not comply with the Ontario *Employment Standards Act, 2000* (“ESA”) because, among other arguments, it allowed the employer to terminate employment without cause in the employer’s “sole discretion” and “at any time.” The clause was deemed unenforceable and the impact of this meant that the employer had to pay the former employee the balance owing under her fixed-term contract.

Let’s dig a little deeper into this case and why it matters...

Facts of the Case:

The employee, Ms. Dufault, entered into a fixed-term employment contract with the Township of Ignace that was set to end on December 31, 2024. The Township terminated Ms. Dufault’s employment early and without cause on January 26, 2023, relying on the termination clause in the contract. Upon termination, she was paid two weeks’ termination pay and her benefits were continued for the two-week period.

Ms. Dufault argued that she was entitled to be paid the balance owing under the fixed-term contract (ie – paid until December 31, 2024) because the termination clause in the contract was invalid for several reasons:

1. The termination “for cause” section breached the ESA because it allowed for termination without notice in broader circumstances than permitted by the “willful misconduct” standard in the ESA.

2. The termination “without cause” section breached the ESA because it suggested less payment in lieu of notice than would be required by the ESA. The employer was only required to continue “base salary” over the statutory notice period and did not consider full “regular wages”.
3. The termination “without cause” section breached the ESA because it said the employer could terminate the employee in its “sole discretion” and “at any time” even though the ESA prohibits termination in certain circumstances.

Findings:

The Court accepted Ms. Dufault’s arguments and decided that the termination clause was not enforceable. As a result, the Township had to pay Ms. Dufault the balance owing under the remainder of the fixed-term contract (101 weeks) less any amounts already paid.

Ms. Dufault’s arguments in #1 and #2 listed above have been enforced by the courts before and do not come as a surprise. However, most notable here is that the Court agreed with argument #3 - that the termination “without cause” section was invalid because it suggested the employer could terminate the employee in its “sole discretion” and “at any time”. This is one of the first decisions where a Court has rendered a without cause termination provision void and unenforceable based on this reasoning. This decision goes beyond fixed term contracts and could be used to invalidate any similarly worded termination clause in an employment agreement.

Key Takeaways:

This case shows how there continues to be new arguments to challenge the enforceability of termination clauses and seek larger termination payments for employees based on statutory non-compliance. Here, the employee was successful. This case also reminds us of why fixed term contracts can be risky. Thus, it is extremely important for employers to review their employment contracts (and termination clauses specifically) on a regular basis. As a trial level decision, it is not binding on other judges, but only time will tell if this reasoning is challenged or accepted in the courts. It is also unclear, at this time, if the case will be appealed.

Please feel free to reach out to us regarding the enforceability of termination clauses or the use of fixed term employment contracts. Our Advisors are happy to chat!