ALBERTA COURT UPHOLDS "4-WEEK" TERMINATION CLAUSE

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In *Lawton v Syndicated Services Inc.*,[1] the Provincial Court of Alberta upheld a termination clause in an employment contract that limited the employee's notice period to just four weeks.

Background

The employee, Mr. Lawton, was the Chief Operating Officer and General Manager of Syndicated Services Inc ("**Syndicated**"). At the time of hire in August 2018, Mr. Lawton and Syndicated had entered into an employment contract that included the following termination clause: "Termination of this contract requires 4 weeks notice."

Syndicated's business suffered significantly due to the economic downturn caused by the COVID-19 pandemic. Therefore, in April 2020, Syndicated terminated Mr. Lawton's employment without cause and provided him with four weeks' termination pay in lieu of notice in accordance with his contract.

However, Mr. Lawton commenced an action for wrongful dismissal against Syndicated, alleging that the termination clause was unenforceable because it was aimed at avoiding the *Employment Standards Code* (which provides for up to eight weeks of individual notice of termination after 10 years of service). Mr. Lawton sought $64,584 in damages as severance pay, $15,000 in damages as benefits, and $10,000 in enhanced damages.

The Court's Decision

According to the court, the termination clause in Mr. Lawton's employment contract was "clear and unambiguous". The termination clause did not unlawfully contract-out of the *Employment Standards Code* because Mr. Lawton had only been employed by Syndicated for approximately 20 months, meaning his statutory notice entitlement would have been just one week at the time of termination.

In upholding the termination clause, the court also noted:

- The contract was the subject of negotiation between Mr. Lawton and Syndicated; and
- The contract did not violate the *Employment Standards Code* because, in Mr. Lawton's case, it provided for notice in excess of the statutory minimum requirements at the time of termination.

In the words of the court: “parties are entitled to enter contracts and negotiate employment terms. So long as the terms are not to frustrate legislative mandate and they are negotiated freely and voluntarily, they ought to be enforced.”

Key Takeaways

The court’s decision in *Lawton v Syndicated Services Inc*. follows on the heels of a similar decision by the Alberta Court of Queen’s Bench – *Bryant v Parkland School Division*[2] – wherein a clause that allowed the employer to terminate employment upon “sixty (60) days or more written notice” was upheld.

These employer-friendly decisions demonstrate that the courts in Alberta – unlike those in certain other Canadian provinces – are willing to interpret termination clauses by giving effect to the plain and ordinary language used (as opposed to straining to create an ambiguity). Nevertheless, we still recommend that employers review their termination clauses to ensure that they are clear and unambiguous, account for the minimum statutory entitlements, and expressly exclude claims for common law reasonable notice.

[1] 2022 ABPC 3
[2] 2021 ABQB 391

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A Cautionary Note