

EMPLOYMENT CONTRACTS: ENFORCEABLE TERMINATION PROVISIONS EXIST

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The tide may be turning against the recent flood of Canadian court decisions involving successful challenges to termination provisions in employment contracts. In the recent decision of *Nutting v Franklin Templeton Investments Corp.*,^[1] an Alberta court upheld a “clear and unambiguous” termination provision that limited the dismissed employee’s entitlements to the statutory minimums.

Background Facts

Mr. Nutting commenced employment with Franklin Templeton Investments Corp. (FTIC) in December 2009. His written employment contract with the company contained the following termination provision that limited his entitlements to the minimum amounts required by applicable employment standards legislation:

“...your employment may be terminated at any time without cause upon the provision by FTIC of the minimum notice of termination, or pay in lieu of notice, benefits and, if applicable, severance pay prescribed by applicable employment standards legislation in the province in which you are employed.”

The contract went on to stipulate that the termination provision was inclusive of all of Mr. Nutting’s entitlements in the event that his employment was ever terminated by FTIC:

“The provision of such notice or pay in lieu of notice, benefits and severance pay constitutes full and final satisfaction of all rights or entitlements which you may have arising from or related to the termination of your employment (including notice, pay in lieu of notice, severance pay, etc.), whether pursuant to contract, common law, statute or otherwise.”

Mr. Nutting was dismissed without cause in April 2012. In terminating Mr. Nutting’s employment, FTIC relied upon the termination provision in the contract and provided two weeks’ notice of termination as required by the Alberta Employment Standards Code (Code).^[2] Mr. Nutting subsequently retained counsel, and sued for wrongful dismissal.

Decision: Contract Enforceable

In argument, Mr. Nutting relied on various cases from across Canada where termination provisions in employment contracts have been struck down as void and unenforceable. In those cases, the provisions were either ambiguous or failed to provide the employee with the required statutory minimums. Mr. Nutting also relied on the oft-cited decision of *Kosowan v Concept Electric*,^[3] where the Alberta Court of Appeal found that the termination provision at issue failed to explicitly oust the employee's entitlement to common law reasonable notice.

In its defence, FTIC argued that the parties had contracted out of the implied common law obligation to provide reasonable notice. This was permissible because the contract both provided for Mr. Nutting's statutory minimum entitlements, and confirmed that there would be no other claims on account of termination of employment (including for common law reasonable notice).

The Court agreed with FTIC that the termination provision in the contract was enforceable, and dismissed Mr. Nutting's claim. According to the Court, the termination provision was clear, and there was no doubt about the intent to limit the obligations upon dismissal to the minimums prescribed by the Code:

“The Agreement in this case contains a clear and unambiguous clause which limits [Mr. Nutting]’s entitlements to the statutory minimums upon dismissal without cause. [Mr. Nutting] has been paid the pay in lieu of notice required by the Agreement. Therefore, a fair and reasonable determination should be made that his claim for additional compensation for termination ought to be dismissed.”

This outcome, said the Court, was consistent with recent decisions from both Ontario and British Columbia involving similarly worded termination provisions.

What Employers Should Know

The Court's decision in *Nutting* is a welcome result for employers across the country. While this decision comes from Alberta, it is consistent with what judges in other Canadian jurisdictions have found: with a properly drafted termination provision, an employer can limit the amounts payable upon dismissal to the statutory minimums.

Therefore, we recommend that employers review their existing offer letter and employment contract templates to ensure that the termination provisions are clear and unambiguous, account for the minimum statutory entitlements and expressly exclude claims for common law reasonable notice. The key is to closely review relevant contract wording to make sure that it fits within the framework which this case supports. If you have any questions or require any assistance, please do not hesitate to contact a member of our Employment and Labour Group.

by George Waggott and Paul Boshyk

[1] 2016 ABQB 669[ps2id id='1' target='']

[2] RSA 2000, c E-9[ps2id id='2' target='']

[3] 2007 ABCA 85. In that case, the Court held that a termination provision which entitled an employee to receive “advance notice or severance pay thereof in accordance with” applicable employment standards legislation merely recognized an obligation to comply with the Code (and the Code preserves an employee’s right to pursue a claim for common law reasonable notice).[ps2id id='3' target='']

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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