

The Power of Intention

Kailey Hubele

July 16, 2024

A recent British Columbia Court of Appeal decision, *Egan v Harbour Air Seaplanes LLP*, 2024 BCCA 222, confirms that a termination provision that incorporates the requirements of the *Canada Labour Code* (the Code) by reference is sufficient to displace the common law presumption of reasonable notice.

The appellant, Mr. Egan, was employed with Harbour Air Seaplanes LLP (Harbour Air) for just under three years as Vice President, Maintenance Operations. Mr. Egan had a written employment agreement which contained a termination clause that purported to rebut the common law presumption of reasonable notice. The clause read as follows:

[t]he Harbour Air group may terminate your employment at any time without cause so long as it provides appropriate notice and severance in accordance with the requirements of the *Canada Labour Code*.

(the Termination Provision).

A downturn in business resulting from the COVID-19 pandemic led Harbour Air to terminate Mr. Egan's employment on a without cause basis. Upon termination, Harbour Air provided Mr. Egan with salary in lieu of notice and severance pay in accordance with the Code.

Mr. Egan commenced an action for wrongful dismissal seeking common law reasonable notice on the basis that the Termination Provision was unenforceable. Harbour Air brought a summary trial application to have Mr. Egan's action dismissed on the basis that the Termination Provision precluded a claim for common law reasonable notice damages. The summary trial application was successful, and the Court dismissed Mr. Egan's action.

Mr. Egan appealed the decision to the British Columbia Court of Appeal. The appeal focused on the enforceability of the Termination Provision, and specifically, the employer's ability to rebut the presumption of common law reasonable notice through a termination provision that only references statutory notice periods, without any other limiting language.

The Court of Appeal held that the Termination Provision was not ambiguous and clearly specified a notice period other than common law notice by referencing the notice and severance provisions of the Code.

The Court also held that when interpreting a contract, the Court should seek to determine the true intentions of the parties. With this in mind, the Court held that there was an intention to provide some other specified

Cassels

notice period and such intention was clear and unambiguous. As a result, limiting language such as “only” or “limited to” was not required to give effect to the intention of the parties.

Key Takeaway

This decision confirms that, in British Columbia, incorporating employment standards legislation by reference is sufficient to rebut the presumption of common law reasonable notice. While this is a welcomed decision for employers, employers should still proceed with care when drafting termination provisions to ensure that the provisions are clearly and unambiguously rebutting the presumption of common law reasonable notice.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.