

## The Hidden Perils of Resignation Letters - When Getting it in Writing Just Isn't Enough

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More often than not, a resignation letter from a valued employee will be as welcomed by employers and human resources professionals alike as a skunk at a company picnic. There are certainly occasions, however, when a resignation letter might feel like a godsend – particularly for employers desperately seeking a low-cost way to reduce staffing levels or, in even more fortuitous circumstances, for an employer struggling to manage a problem employee.

While one's natural inclination might be to accept such resignation as soon as possible and put the employee's departure in motion, employers would be wise to tread carefully before taking an employee's resignation letter "to the bank," if you will - particularly when it has been triggered or prompted by exceptional circumstances.

One such exceptional resignation was front and centre in the recent Ontario Court of Appeal decision in *English v. Manulife Financial Corporation (English)*.

### Background

64-year old Elisabeth English had been working as a Senior Customer Relationship Manager for Standard Life Insurance for nine years when it was acquired by Manulife Financial Corporation (Manulife). Upon learning of Manulife's plan to implement a new computer system post-acquisition, rather than undergo training on the system, Ms. English gave her supervisor a letter indicating that she would be retiring at the end of the year. The letter read as follows:

*Dear Clive,*

*This will serve formal notice that I will be retiring effective December 31, 2016.*

*I have enjoyed working at Standard Life/Manulife for the past 10 years very much, and want to thank you very much for all your support during my tenure.*

*I especially want to express my gratitude for all your support and understanding during my very difficult times in 2012 and again in 2015.*

*I will entertain a part-time position, two or three days per week, should be possible (sic), but I understand if it*

*is not.*

*Again thank you so much for everything.*

*Sincerely,*

*Elisabeth English*

While the letter was silent as to Ms. English's reasons for choosing to retire at that particular time, in tendering the letter, she explained to her supervisor that the timing of her decision was prompted by the impending move to the new computer system. When Ms. English's supervisor asked her if she was sure about her decision, she responded "not totally," at which point her supervisor told her that, if she changed her mind, she could rescind or reconsider her notice of resignation. Ms. English interpreted this to mean that she could rescind her notice at any time, right up until the end of the year. Soon thereafter, an announcement of her impending retirement was made, with Ms. English's consent, at a staff meeting. Manulife then began preparations to distribute Ms. English's caseload to other Customer Relationship Managers with the plan to eliminate her position altogether once she retired.

Approximately three weeks later, Manulife announced that it would be suspending the conversion to the new computer system indefinitely. At that point, for the first time since presenting her retirement letter, Ms. English advised that she wished to withdraw her notice. The company, having relied on it, did not accept and indicated that it would be honouring her retirement notice. Ms. English responded by commencing an action for wrongful dismissal.

## **Decision**

When the matter came before a motion judge during the subsequent motion for summary judgment, the judge examined Ms. English's letter and concluded that it constituted a "clear and unequivocal" resignation, while noting that she had drafted it herself and submitted it of her own volition. As to whether Ms. English could subsequently, unilaterally rescind her notice of resignation, the motion judge considered extensive case law on the subject and held that she could not once it had been accepted by her employer. As such, Ms. English was found not to be entitled to any damages for wrongful dismissal.

Ms. English appealed the matter to the Ontario Court of Appeal, however, and the decision was ultimately reversed. According to the Court of Appeal, notwithstanding the content of the letter, it was clear that Ms. English was "equivocal when giving her resignation notice, and that her equivocation was condoned by Manulife through the actions of [her supervisor]." The Court continued by noting that, "[w]hen Manulife cancelled the computer conversion within three weeks of her September 22, 2016 conversation with [her supervisor], the basis for [Ms. English's] resignation disappeared." The Court further found that Manulife was bound by her supervisor's promise to her that she could change her mind.

The Court, therefore, concluded that Ms. English did not in fact resign but, rather, that her termination was indeed a wrongful dismissal. As such, she was found to be entitled to pay in lieu of notice of termination at common law – an amount determined to be 12 months' salary.

## Takeaways for Employers

While it is always good practice for employers to “get it in writing” whenever an employee communicates their decision to resign or retire, as the *English* decision makes clear, that is not always the end of the story. Managers or human resource professionals who are presented with notices of resignation should always be live to the underlying reasons for the resignation. If it appears an employee's decision to resign is in protest to changing working conditions or, in other circumstances, to strained relationships with co-workers or managers, management must be especially wary of ensuring that the resignation is not only voluntary but that it represents a “clear and unequivocal” decision with “no strings attached.” Otherwise, a no-cost resignation risks transforming into a very costly termination.

For further information, please contact Adrian Jakibchuk or any member of the Employment & Labour Group.

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