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Ontario Court of Appeal upholds 'just cause' termination clause

By **Soma Ray-Ellis and Max Ray-Ellis**

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In 2020, the Court of Appeal for Ontario's decision in *Waksdale v. Swegon North America Inc*., 2020 ONCA 391, significantly impacted employment contracts in Ontario, voiding most termination clauses that attempted to deny *Employment Standards Act* (ESA) entitlements for "just cause" terminations. However, a recent decision of the Ontario Court of Appeal has upheld a termination clause with "just cause" termination language, providing greater certainty to employment counsel with respect to drafting employment contracts.

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In *Waksdale*, the employer had conceded that the "Termination for Cause" provision in the employment contract was void because it violated the ESA, but they argued that the "Termination of Employment with Notice" provision was still valid, as it was not alleging cause. The Court of Appeal found that all of the termination provisions in the contract were unenforceable because of the "for Cause" provision that violated the ESA. The decision stated, "where an employer does not rely on an illegal termination clause, it may nonetheless gain the benefit of the illegal clause," and therefore, termination provisions are to be understood together. They also found that a severability clause in the employment contract could not be applied to sever the offending portion of the termination provisions.

Since then, the Superior Court and the Ontario Court of Appeal have found various termination provisions to be void, thereby entitling the employee to common law rights upon termination. The reasoning behind most of these decisions has been the concept that the ESA standard for denying notice payments is a higher standard than that of the common law "just cause" standard, which does not require intention. Further, that a breach of the ESA voids the entirety of the termination provisions of an employment contract.

Recent decision: 2025, Ontario Court of Appeal upholds 'just cause' termination clause providing ESA minimum payments only

Recently, the Ontario Court of Appeal looked at this issue again in the decision of *Bertsch v. Datastealth Inc.*, 2025 ONCA 379.

In this case, the court upheld the motion judge's ruling that the termination provision of the employment agreement was valid. The specific termination clause provided:

> "If your employment is terminated with or without cause, you will be provided with only the minimum payments and entitlements, if any, owed to you under the *Ontario Employment Standards Act*, 2000 and its

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> Regulations, as may be amended from time to time (the "ESA"), including but not limited to outstanding wages, vacation pay, and any minimum entitlement to notice of termination (or termination pay), severance pay (if applicable) and benefit continuation. You understand and agree that, in accordance with the ESA, there are circumstances in which you would have no entitlement to notice of termination, termination pay, severance pay or benefit continuation.
>
> You understand and agree that compliance with the minimum requirements of the ESA satisfies any common law or contractual entitlement you may have to notice of termination of your employment, or pay in lieu thereof. You further understand and agree that this provision shall apply to you throughout your employment with the Company, regardless of its duration or any changes to your position or compensation."

Additionally, s. 11(a), which was in the "General" provisions of the employment agreement, also provided that:

> "If any of your entitlements under this Agreement are, or could be, less than your minimum entitlements owing under the *Ontario Employment Standards Act*, 2000, as amended from time to time, you shall instead receive your minimum entitlements owing under the *Ontario Employment Standards Act*, 2000, as amended from time to time."

The court held that the termination provision in *Bertsch* was valid because it specifically stated that an employee who was terminated "with or without cause" would receive the minimum payments and entitlements under the ESA. The court viewed the provision as unambiguous and stated that it did not depart from the minimum standards guaranteed by the ESA, thereby making it enforceable.

It appears that as long as employers are not denying employees their minimum rights under the ESA, the courts are likely to uphold the termination clauses in employment contracts, even if they refer to the term "just cause."

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