

DENTONS

WEBINAR SERIES
LEGAL UPDATES
FOR CANADIAN EMPLOYERS

Wrongful dismissal case law update

March 22, 2024

Grow | Protect | Operate | Finance

Moderator:



Karina Pylypczuk
Senior Associate, Toronto, Canada
+1 416 862 3482
karina.pylypczuk@dentons.com

Speakers:



Adrian Miedema
Partner, Toronto, Canada
+1 416 863 4678
adrian.miedema@dentons.com



Julia Dales
Associate, Ottawa, Canada
+1 613 783 9687
julia.dales@dentons.com



Jenny Wang
Associate, Edmonton, Canada
+1 780 423 7311
jenny.wang@dentons.com



A just cause hat trick: breach of policy, conflict of interest and lies

Adrian Miedema

A just cause hat trick: Breach of policy, conflict of interest and lies

Lagala v. Patene Building Supplies Ltd, 2024 ONSC 253

- Health, Safety and Training Manager did not report her fall in parking lot.
- She made WSIB claim which came to attention of employer.
- Court: employee put employer at risk of violating Workplace Safety & Insurance Act. She was in a clear conflict of interest. She lied during the investigation. Just cause for dismissal.

“Put simply, an employer cannot be expected to employ a Health and Safety manager who does not comply with health and safety policies when those policies affect her, and then is dishonest with her employer about what happened after the fact.”



**Can employees be terminated “for any reason”,
but not “at any time”?**

Julia Dales

Case review

Dufault v. the Corporation of the Township of Ignace, 2024 ONSC 1029

Facts:

- Employee, Dufault, on a fixed-term agreement set to end December 31, 2024.
- Employment is terminated after just over a year of service on January 26, 2023.
- Dufault claims damages for wrongful dismissal for balance of fixed-term agreement.
- Dufault argues that her termination clause was unenforceable for a number of reasons, including termination “at any time” language.

Case review

Dufault v. the Corporation of the Township of Ignace, 2024 ONSC 1029

The termination clause

The for-cause language:

- “The Township may terminate this Agreement and terminate the Employee’s employment at any time and without notice or pay in lieu of notice for cause...”
- “...For the purposes of this Agreement, “cause” shall include but is not limited to the following...”
- The definition of cause included failure to perform services, as well as acts of willful negligence or disobedience not condoned by the employer

Case review

Dufault v. the Corporation of the Township of Ignace, 2024 ONSC 1029

The termination clause

The without cause language:

- “The Township may at its sole discretion and without cause, terminate this Agreement and the Employee’s employment thereunder at any time upon giving to the Employee written notice as follows...”
- “...the Township will continue to pay the Employee’s base salary for a period of two (2) weeks per full year of service to a maximum payment of four (4) months or the period required by the Employment Standards Act, 2000 whichever is greater...”
- “...The Township will continue the Employee’s short-term and long-term disability benefits during the period required by the Employment Standards Act, 2000 and will pay all other required accrued benefits or payments required by that Act.”

Case review

Dufault v. the Corporation of the Township of Ignace, 2024 ONSC 1029

Arguments for invalidity:

- For cause language unenforceable (includes conduct not amounting to ESA cause) - Waksdale
- References common law cause without ensuring ESA entitlements would be paid out
- Without cause language refers to base salary through notice period rather than regular wages
- No mention of vacation pay
- Without cause language purports to allow termination of employment “at any time” despite ESA prohibitions against same

Case review

Dufault v. the Corporation of the Township of Ignace, 2024 ONSC 1029

Decision:

- Court reviews the interpretation principles governing enforceability of termination clauses (i.e. recognize power imbalance, encourage ESA compliance, clarity, prefer greater benefit to employee...)
- And the key rules:
 1. EA not consistent with ESA = invalid → common law damages.
 2. Interpret EA in way parties would reasonably expect at time they entered it.
 3. Look to intention of parties rather than parse words looking for ambiguity.
 4. Interpret EA, and read the termination provisions, as a whole.

Case review

Dufault v. the Corporation of the Township of Ignace, 2024 ONSC 1029

Decision:

Termination clause not enforceable

- “For cause” is a common law term and still requires ESA notice
- ESA cause definition is non-compliant
- Wages cannot be reduced during notice period - employee must receive all “regular wages” (e.g. employer-paid leave days not mentioned)
- Vacation pay not mentioned
- Employee cannot be terminated “at any time” – ESA prohibits termination under s 53 (post-leave) and s. 74 (in reprisal).

Case review

Dufault v. the Corporation of the Township of Ignace, 2024 ONSC 1029

Decision:

Damage award

- \$157,071.57 reflecting 101 weeks of base salary and pay in lieu of benefits to account for remaining 101 weeks under fixed term agreement
- “In the absence of an enforceable contractual provision stipulating a fixed term of notice, or any other provision to the contrary, a fixed term employment contract obligates an employer to pay an employee to the end of the term, and that obligation will not be subject to mitigation.” – *Howard v Benson Group, 2016 ONCA 256*

Case review

Henderson v. Slavkin et al. 2022 ONSC 2964

- Receptionist in oral surgery office terminated after 30 years
- Henderson argues termination clause is ambiguous, does not provide for severance or vacation pay during notice period, for cause language is overly broad, and that termination could be “for any reason”.

Case review

Henderson v. Slavkin et al. 2022 ONSC 2964

- The without cause language [emphasis added]:

... Your employment may be terminated without cause **for any reason** upon the provision of notice equal to the minimum notice or pay in lieu of notice and any other benefits required to be paid under the terms of the *Employment Standards Act*, if any. By signing below, you agree that upon receipt of your entitlement under the *Employment Standards Act*, no further amount shall be due and payable to you, whether under the *Employment Standards Act*, any other statute or common law...

Case review

Henderson v. Slavkin et al. 2022 ONSC 2964

Decision:

- Review of same interpretation principles as in *Dufault*
- Clause is unenforceable because of the for-cause language
- Court upholds the termination clause, which included “for any reason” language – applies the principle that the court should not strain to create ambiguity where none exists and look at true intention of the parties.

In conclusion

- Employees arguably may be terminated for any reason, but not at any time, for now....
- Employers should review their employment agreements once again
- Please reach out to any member of our [Ontario employment law team](#).

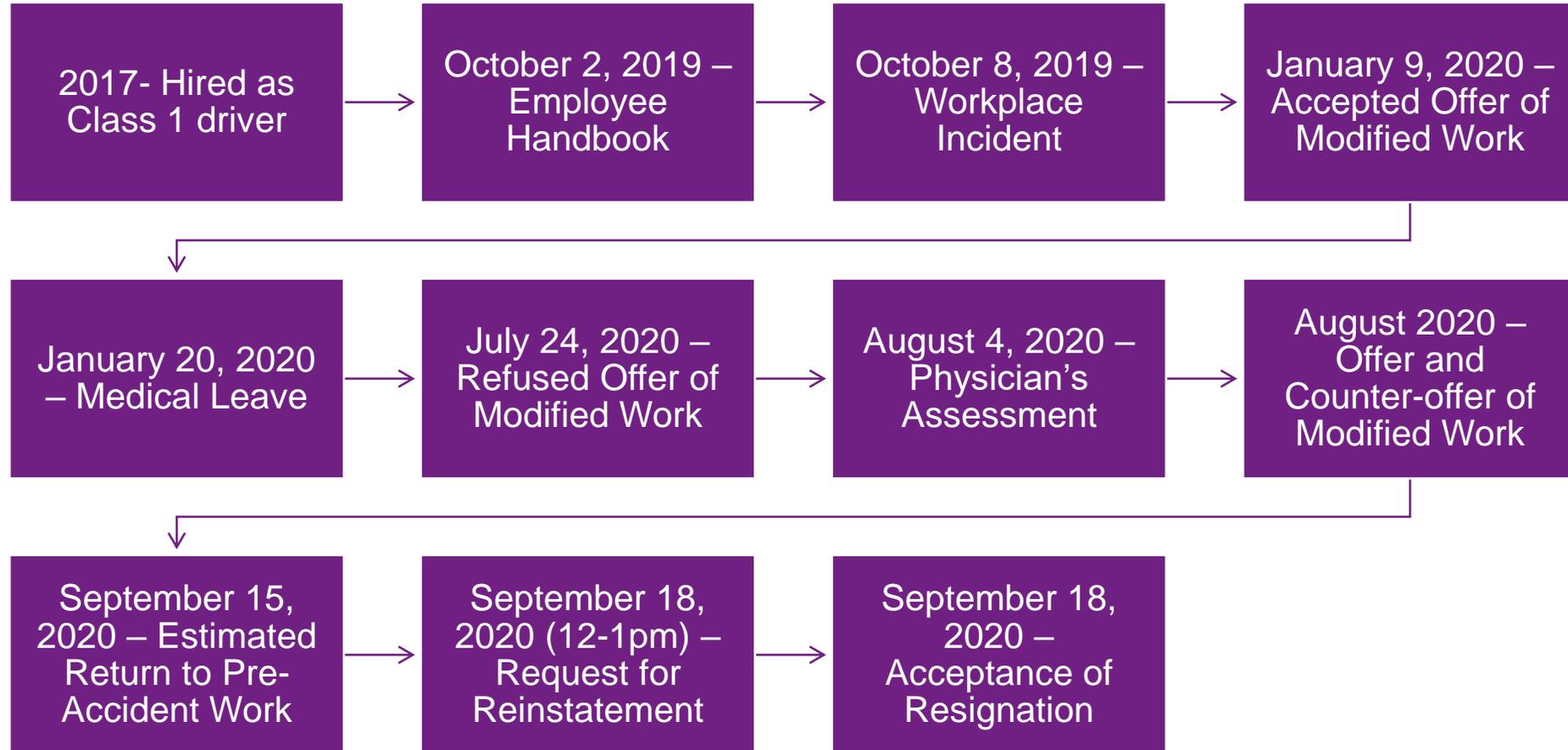


Stonham v Recycling Worx Inc.

Jenny Wang

Facts - Timeline

Stonham v Recycling Worx Inc.



Was it wrongful dismissal?

Stonham v Recycling Worx Inc.

Recycling Worx argues:

- Stonham resigned in accordance with the Resignation Clause in the Employee Handbook;
- Stonham otherwise resigned;
- Stonham abandoned his employment; or
- It had just cause to terminate Stonham due to absenteeism.

Enforceable Resignation Clause?

Stonham v Recycling Worx Inc.

The Employee Handbook had the following Resignation Clause:

- *“Employees are considered to have resigned from the company if they are absent for more than three consecutive working days without contacting the office”.*

Unenforceable:

- The Resignation Clause is ambiguous.
- It purports to fundamentally change the employee’s common law rights without consideration.
- *Contra proferentem* rule.

Otherwise Resigned?

Stonham v Recycling Worx Inc.

An employee who voluntarily resigns has not been dismissed and has no remedy through a wrongful dismissal claim. Because of this, the law recognizes that an effective and binding resignation must be clear and unequivocal. In determining whether an employee has resigned, the Court applies a subjective and objective test: subjectively, did the employee intend to resign; and objectively, viewing all the circumstances, would a reasonable employer have understood that the employee had resigned.

Abandoned Employment?

Stonham v Recycling Worx Inc.

Has the employee, unequivocally through their words or actions and viewing the circumstances objectively, abandons the contract of employment?

- Is the employee ready to return to work?
- Has the employer taken any steps to clarify, or seek an update on, the employee's expected return date?

Termination for Cause?

Stonham v Recycling Worx Inc.

Does the employee's behaviour give rise to the breakdown of the employment relationship?

- The nature and extent of the misconduct;
- The surrounding circumstances; and
- Whether dismissal is a proportional response.

Except for the most serious circumstances, an employer should use progressive discipline or alternative sanctions before terminating an employee for misconduct.

Termination for Cause?

Stonham v Recycling Worx Inc.

When considering whether an employee's deliberate breach of an employer's rule of policy about notice of absence can give rise to just cause, a court will look at whether the employee's absence:

- occurred after a leave of absence and the employee failed to promptly return to work without advising his employer;
- occurred under false pretenses;
- occurred despite a direct order not to be absent;
- occurred in breach of known and enforceable contractual provisions or employer policies related to notice of absences;
- was the employee's fault rather than something that was reasonably explained or excusable (e.g. something accidental);
- was intentional rather than based on a misunderstanding;
- was part of a history or pattern of absenteeism rather than only a few instances; and
- caused harm or prejudice to the employer's interests.

Take Aways

Stonham v Recycling Worx Inc.

Things Recycling Worx did well:

- Implemented an Employee Handbook; and
- Stonham was required to review and sign an acknowledgment.

However, Recycling Worx failed to:

- Implement an employment agreement;
- Provide consideration to Stonham;
- Follow its disciplinary policy; and
- Confirm a return-to-work date.

Thank you



Karina Pylypczuk
Senior Associate, Toronto, Canada
+1 416 862 3482
karina.pylypczuk@dentons.com



Adrian Miedema
Partner, Toronto, Canada
+1 416 863 4678
adrian.miedema@dentons.com



Julia Dales
Associate, Ottawa, Canada
+1 613 783 9687
julia.dales@dentons.com



Jenny Wang
Associate, Edmonton, Canada
+1 780 423 7311
jenny.wang@dentons.com