
Employer's written contract prevails in dismissal of director

In February 2009, the Ontario Superior Court of Justice released its decision in *Cronier v. French Language Health Services Network of Eastern Ontario* (the "Network"). In this action, former Executive Director, Ms. Cronier, claimed the Network wrongfully dismissed her after six months of employment. The case involved allegations by the plaintiff of a verbal agreement, which would void the termination provisions in the written employment contract, as well as claims for *Wallace* damages. The Network was represented by Emond Harnden's own André Champagne, who successfully defended the Network against all of the plaintiff's claims, with the Court dismissing the case in its entirety.

In 2005 the Network, an organization consisting of agencies that provide health services in French in Eastern Ontario, advertised for the position of Executive Director ("ED"). The year 2005 marked an uncertain period for the health sector because of broad, government-initiated changes to Ontario's health system. The impact of these changes on the Network was unknown, and in light of the Network's uncertain future the position of ED was somewhat precarious. The Network initially looked to fill the position through a service loan, secondment or short-term contract. However, this proved difficult. Ultimately Ms. Cronier, who had been unemployed for 15 months, was the successful candidate for the ED position.

Ms. Cronier was provided with the outgoing ED's contract as a starting point for the negotiations. On March 22nd, she met with the Network's President to discuss various aspects of the employment. Later at trial, Ms. Cronier would claim that representations made during this meeting constituted a verbal agreement. Subsequent to the meeting, Ms. Cronier was active in drafting and revising various clauses of the contract she had been provided. Neither party sought legal advice at that time. She began her work with the Network on March 29th. However the employment contract was not signed until May 2nd. It had an effective date of employment of April 25th.

The employment contract included the following termination clause as redrafted by Ms. Cronier:

"5. Termination and discharge allowance

- a. The Employer or the Employee may end this contract by providing one month's written notice.
- b. If the employer ends the contract without cause, it shall pay the Employee a termination allowance equal to three months of service on the Employee's last day of work.
- c. If the Network ceases operations or goes bankrupt, it shall pay the Employee a termination allowance equal to three months of service on the Employee's last day of work.

When the first six months have ended and in consideration of a positive performance appraisal, the termination allowance terms shall be renegotiated to better reflect the termination and discharge allowance practice of the directors of similar organizations in the National Capital Region."

Evidence at trial suggested that although Ms. Cronier “began her employment with a great deal of energy”, the Network’s President did not agree with all of her initiatives. In addition, at least two employees complained about Ms. Cronier, one testifying at trial about her “bulldozer” style. After six months had passed, the Executive Committee met to discuss Ms. Cronier’s ongoing employment prospects at the Network. They decided to invoke an administrative termination of employment and trigger the termination provision in the contract. As such, they ultimately agreed to provide Ms. Cronier with four months’ pay in lieu of notice on account of paragraphs 5 (a) and (b) of the contract. Ms. Cronier commenced an action, inter alia, for wrongful dismissal against the Network and originally claimed 21 months pay in lieu of notice for seven months service.

THE “VERBAL” AGREEMENT

Once at trial with her fourth hired lawyer, the plaintiff claimed that during her meeting with the President on March 22nd, a verbal agreement came into existence. The assertion of a verbal agreement was important to the plaintiff’s case for a number of reasons. First, the verbal agreement was alleged to have more beneficial terms for Ms. Cronier, in particular with respect to the end of the employment and the notice period. Presumably these terms would “better reflect the treatment given to directors of similar organizations in the region” than those contained in the written contract.

Second, the existence of the verbal agreement would require the employer to offer additional consideration in order to compensate the employee for agreeing to the less beneficial terms in the subsequent written agreement. Following from this, the plaintiff argued that since she was not provided any additional consideration for signing the written agreement, the written agreement was void.

The Court refused to accept the existence of a verbal agreement. It found that not all of the terms of the employment relationship were agreed to in the March 22nd meeting. This was evidenced by the various drafts of the employment contract submitted by the plaintiff to the Network in the days following the meeting. To the Court, this indicated that there was no *consensus ad idem* or “meeting of the minds”, which is one of the fundamental requirements for the formation of a contract.

WAS CONSIDERATION NECESSARY?

The Court next turned to the question of whether the written agreement was void by the Network’s failure to offer additional consideration. The employee’s argument was that the employment actually began on March 29th, and not April 25th, as the contract stated. As a result, the plaintiff asserted that the Network was required to provide some form of additional payment in return for the plaintiff signing the written agreement of May 2nd.

The Court recognized the duty of an employer to provide consideration to an employee when it changes terms of the employment contract to the employee’s detriment. It stated,

“The importance of the exchange of a valuable consideration, in order to allow a change that lessens an employee’s benefits is fair and equitable. Normally, the employee is vulnerable and, faced with the employer, there is an imbalance.”

The fundamental requirement for the operation of the rule is that there must be a change that lessens the employee’s benefits. The Court examined the evidence and found that, “It is impossible to claim that the signed contract removes a benefit from Ms. Cronier.” The Court referred to the fact that the “signed contract is largely the one that Ms. Cronier drew up to her advantage” and that there was no clause added into the written agreement that was inconsistent with the benefits of the employment that she had been previously receiving. These benefits were all the consideration necessary to render the contract legal and enforceable.

WAS THE TERMINATION CLAUSE AMBIGUOUS?

The plaintiff also attempted to undermine the validity of the written termination provision, which she had admittedly drafted, by claiming that the provision was ambiguous. The provision called for a renegotiation of remuneration and the notice period after six months. The plaintiff asserted that “it was impossible...to know what her rights would be in the event of termination after the first six months and after the negotiations provided for and inserted into the contract...” In the plaintiff’s submission this ambiguity rendered the entire written agreement unenforceable.

The Court refused to accept this argument. It summarized the general law in relation to notice:

“When there is termination without cause, the employer has the obligation to give reasonable notice. This presumption can be reversed if the contract provides for another notice period. But we cannot go beyond the minimum standards established in the Act.”

In light of the Network’s provision of four months’ notice, the Court found that there was no evidence supporting a presumption that the Network would not provide reasonable notice in subsequent negotiations. In the circumstances there was no ambiguity, and the termination provision in the written agreement was enforced.

The plaintiff has served a Notice of Appeal of the trial Court’s decision.

In Our View

It is interesting to note that after dismissing the plaintiff’s action, the Court nevertheless went on to address the plaintiff’s damages. It found that there was no evidence establishing any injury done to the plaintiff’s reputation. The Court rejected a letter from the plaintiff’s doctor that suggested adverse effects of the termination, finding the letter to be “vague and hypothetical.” The Court ruled that even if it had erred in its finding for the Network, the plaintiff’s notice period would be set at four months’ allowance, and no *Wallace* or *Honda* damages would have been awarded. The Court stated that the termination was done in good faith and with a great deal of respect.

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