



# What's New in HR Law

## Federally Regulated Employers Beware: Termination Clause which Violated the *Canada Labour Code* Held Unenforceable

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### Bottom Line

In the recent decision of [Sager v. TFI International Inc.](#), the Ontario Superior Court determined that a termination clause governed by the *Canada Labour Code* was unenforceable, despite offering more termination and severance pay than the minimum requirements under the *Canada Labour Code* ("CLC"). The clause was struck down for failing to maintain the terms and conditions of employment during the statutory notice period.

### Background

The employee, Mr. Sager, was employed by Loomis Express, a subsidiary of TFI International Inc., for under 3 years. At the time of his termination, Mr. Sager held the position of Vice-

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President of Sales and Customer Care. His compensation package consisted of a base salary, in addition to certain employment-related benefits which included a bonus plan, a car allowance and participation in a group insurance and pension plan.

The employment relationship was governed by a written employment contract which stipulated that the company could terminate the employment relationship without cause by providing the greater of three months' base salary or one month's base salary per year of completed service to a maximum of 12 months. The termination clause also stated that the "*payment shall be inclusive of any and all requirements*" that would be owing to Mr. Sager under the *CLC*.

Mr. Sager was dismissed without cause on July 31, 2019. Upon termination, TFI paid Mr. Sager three months' base salary in accordance with the contract. The *CLC* required only two weeks' termination pay plus five days' severance pay, or a total of 15 days' pay. Despite receiving substantially more than the statutory requirements of the *CLC*, Mr. Sager sued his former employer for wrongful dismissal. The matter was heard by the Ontario Superior Court by way of a summary judgment motion.

### **Superior Court: Termination Clause is Unenforceable**

On summary judgment motion, the plaintiff argued that the termination clause was unenforceable because it failed to maintain all the terms of his employment during the statutory notice period, contrary to the *CLC*. Section 231(a) of the *CLC* states that the employer cannot "*reduce the wages or alter any other term or conditions of employment*" during the notice period. The plaintiff argued that the termination clause in his contract was contrary to section 231(a) of the *CLC* because it relieved the employer of its statutory obligation to maintain pension contributions, continue his group benefits, pay his car allowance, pay vacation pay, and pay his bonus.

The defendant argued that the plaintiff received more upon termination under the employment contract than he would have received under the *CLC* and, therefore, the clause was enforceable.

The Court ultimately held that the termination clause in Mr. Sager's employment contract was not enforceable because it purported to limit his entitlements to employment-related benefits during the statutory period required by the *CLC*. In coming to this conclusion, the Court noted that the termination clause intended to limit the employer's obligation to a single lump sum payment and stated that payment was inclusive of all requirements under the *CLC*. If the lump sum payment was treated as inclusive of all requirements under the *CLC*, then it excluded any payment on termination for Mr. Sager's pension, car allowance or bonus, which were all terms and conditions of his employment. It also excluded the continuation of Mr. Sager's benefits during the notice period. This amounted to a change in the terms of his employment during the notice period, which was inconsistent with s. 231(a) of the *CLC*.

After determining that the termination clause was void and unenforceable, the Court held that Mr. Sager was entitled to nine months of common law notice based on the relevant *Bardal* factors (which included his age, his senior executive position, and the availability of other

comparable employment). The Court also determined based on the evidence that TFI had induced Mr. Sager to accept employment, which lengthened the notice period.

The Court also awarded the contractual benefits, car allowance and RRSP contributions he would have earned over the course of the nine-month notice period, as well as damages for the bonus amount Mr. Sager would have received for the time he actually worked before his July 2019 termination and the notice period thereafter.

## Check the Box

The *Sager* decision is one of the first reported Ontario decisions to consider the enforceability of a termination clause governed by the *CLC*. The vast majority of wrongful dismissal cases in Ontario consider the enforceability of termination clauses governed by the *Employment Standards Act, 2000*. As such, federally regulated employers must take note and ensure that their employment contracts are up-to-date and provide for the continuation of all employment-related benefits during the statutory notice period. Failing which, they too may be subject to scrutiny by the courts in Ontario.

## Need more information?

For more information about drafting enforceable employment contracts, or employment issues related to federally regulated employees, please contact [Sara Yousefi](#) at 416-993-4987, or your regular lawyer at the firm.



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