



What's New in HR Law

All Good Things Come to an End: Court of Appeal Overturns *Rahman* Decision that Distinguished *Waksdale*

June 10, 2022 | By [Natalie Garvin](#)

Bottom Line

In September 2021, the Superior Court of Justice in *Rahman v Cannon Design Architecture Inc.* (“*Rahman*”) upheld the “just cause” termination provision in an employment contract. This decision provided employers with hope that courts may shift from the rigid and strict interpretation of employment contracts that has arisen since the Court of Appeal’s decision in *Waksdale v Swegon North America Inc.* (“*Waksdale*”).

However, the Court of Appeal for Ontario (“ONCA”) has now overturned the Superior Court of Justice’s decision in *Rahman*, finding that the “just cause” provision in the employment contract contravened the *Employment Standards Act, 2000* (the “ESA”). The provision permitted the employer to terminate employment without providing notice or pay in lieu in circumstances broader than the statutory standards of “willful misconduct, disobedience, or willful neglect of duty.”

For more information on the Court’s approach in analyzing employment termination provisions since *Waksdale*, see our summaries of the decisions in [Rahman](#), [Perretta v Rand A Technology Corporation](#), [Livshin v The Clinic Network Canada Inc.](#), and [Campbell-Givons v Humber River Hospital](#).

This article is for the purposes of only general information and does not constitute legal advice or opinion.

Factual Background

The plaintiff, Farah Rahman, was employed by Cannon Design Architecture Inc. (“CDAI”) as a Senior Architect Principal and Office Practice Leader. After being employed for four years, she was dismissed from employment and provided with four weeks of her base salary, in accordance with her contractual and statutory entitlements.

Rahman sued for wrongful dismissal and, on a summary judgment motion, asked the Court to determine: (1) whether the termination provision in her employment contract was enforceable; and (2) that the three defendants — CDAI, Cannon Design Ltd., and The Cannon Corporation — were her common employers.

The plaintiff’s main challenge to the termination provision in her employment contract was that the just cause provision permitted termination without notice in circumstances beyond those permitted by the *ESA*, contrary to the Court’s decision in *Waksdale*.

Ultimately, the Superior Court of Justice found the termination provision in the parties’ employment contract was enforceable. The motion judge also held that Rahman was employed by only CDAI. Rahman appealed the Superior Court of Justice’s decision.

The ONCA’s Decision

The Termination Provision was Void and Unenforceable

On appeal, the ONCA held the termination provisions of Rahman’s employment contract breached the *ESA* and were therefore void.

The cessation of Rahman’s employment was governed by two “just cause” provisions: one in her Offer Letter, and the other in her Officer Agreement. While the two “just cause” provisions conflicted, the Offer Letter stipulated that its provisions would prevail in such circumstances. The Offer Letter set out the appellant’s entitlements upon termination for just cause as follows:

CannonDesign maintains the right to terminate your employment at any time and without notice or payment in lieu thereof, if you engage in conduct that constitutes just cause for summary dismissal.

The ONCA found the motion judge erred in law by considering contextual factors beyond the plain wording of the termination provisions, such as Rahman’s receipt of independent legal advice, the sophistication of the parties, the parties’ equal bargaining power, and the parties’ mutual intent to apply the minimum standards of the *ESA*. The ONCA confirmed “it is the wording of a termination provision which determines whether it contravenes the *ESA*,” and “allowing subjective considerations to distort and override the wording” is an extricable error of law.

The Court of Appeal found the entire termination clause was unenforceable because the “just cause” termination provision violated the *ESA*. Under the *ESA*, an employee is entitled to notice of termination (or pay in lieu thereof) even where the employer asserts just cause for termination, unless the employee has been “guilty of wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the employer.” The Offer Letter, however, allowed CDAI to terminate employment without notice (or pay in lieu) if Rahman “engage[d] in conduct that constitute[d] just cause for summary dismissal” – *i.e.*, language broader than the *ESA* standard of “wilful misconduct.” Relying upon *Waksdale* and subsequent cases, the ONCA held that this broader language violated the *ESA* and, in turn, invalidated all the termination provisions in the contract.

The Defendants Were Common Employers

In the Superior Court decision, the motions judge determined that only CDAI was Rahman's employer because CDAI had offered her employment and was the entity that paid her. On appeal, the ONCA held these conclusions were palpable and overriding errors of fact.

The ONCA concluded the respondents were common employers as the evidence showed Rahman's employment was directed and controlled by The Cannon Corporation and that the respondents were intertwined. Factors underpinning this finding included, without limitation:

- The Offer Letter was on CannonDesign letterhead and referred to CannonDesign as a legal entity of CDAI.
- The Officer Agreement, which was referenced in the Offer Letter, identified The Cannon Corporation as Rahman's employer.
- The Offer Letter was signed by an executive of The Cannon Corporation.
- The Officer Agreement stated that The Cannon Corporation and its subsidiary companies, including CDAI, was a party to the agreement.
- Under the Officer Agreement, Rahman was required to own shares of The Cannon Corporation.
- A human resources employee of The Cannon Corporation had sent the Offer Letter and Officer Agreement to Rahman.
- The Cannon Corporation's Benefits and Compensation Senior Associate confirmed that she managed and administered Rahman's benefits and compensation.
- Rahman's compensation was based, in part, on the performance of The Cannon Corporation's US counterparts.
- Rahman's bonus was paid as shares of The Cannon Corporation.
- The CannonDesign logo was on Rahman's pay statements.

Check the Box

This is yet another decision confirming and applying *Waksdale* and its strict interpretation of employment agreements regardless of contextual factors and the sophistication of the parties.

Constructing binding and enforceable termination provisions in employment contracts remains difficult and requires diligent consideration of the case law. Employers who wish to limit their liability when terminating employees should seek legal assistance in drafting employment contracts, to ensure the enforceability of the termination provisions used.

Need More Information?

For assistance with preparing enforceable employment contracts or for advice and representation in respect of wrongful dismissal litigation, please contact [Natalie Garvin](#) at 416-408-5512, or your regular lawyer at the firm.



Toronto

Bay Adelaide Centre
333 Bay Street
Suite 2500, PO Box 44
Toronto, Ontario M5H 2R2
tel: 416.408.3221
fax: 416.408.4814
toronto@filion.on.ca

London

620A Richmond Street, 2nd Floor
London, Ontario N6A 5J9
tel: 519.433.7270
fax: 519.433.4453
london@filion.on.ca

Hamilton

1 King Street West
Suite 1201, Box 57030
Hamilton, Ontario L8P 4W9
tel: 905.526.8904
fax: 905.577.0805
hamilton@filion.on.ca