News

OCA Upholds Termination Clause in Employment Contract

Date: August 16, 2013

In a recent decision, Dimson v. KTI Kanatek Technologies Inc., the Court of Appeal for Ontario found that the termination provision in an employment contract was enforceable and did not violate the *Employment Standards Act, 2000* ("ESA").

At issue were the following contract provisions:

Section 18

(c) In addition, [the employer] may terminate this Agreement at its sole discretion for any reason, upon providing Employee all payments or entitlements in accordance with the standards set out in the Ontario *Employment Standards Act*, as may be amended from time to time.

(d) If at any time [the employer] provides you with a bonus, it will not be included in the calculation of payment for the purpose of this Article or as otherwise agreed to or required by the *Employment Standards Act.*

Because of the variable nature of the plaintiff's compensation, the defendant had to average the plaintiff's salary, commission and income for a twelve week period prior to termination to determine the ESA notice and severance payments owing at the time of termination. The plaintiff argued that clause 18(d) essentially waived a minimum standard in that bonuses would be excluded from that calculation, and therefore the termination provision was void.

The Court of Appeal for Ontario upheld the finding of the motion judge that the clause in question was valid and did not contravene the ESA. The plaintiff was not entitled to a bonus during the twelve week period; therefore a bonus was not taken into account in this calculation. The motion judge had found that "clause 18(d) makes it clear that with respect to the bonus, it will be included in termination entitlement calculations if the parties come to a subsequent agreement about this or it is specifically required by the ESA." The Court of Appeal agreed, stating that "it would be inconsistent to interpret 18(d) as denying the appellant his entitlement under the ESA when 18(c) expressly provides that the appellant would be provided with everything to which he was entitled under the ESA."

For a more detailed discussion of this case, see our Case in Point blog post "OCA Affirms Termination Clause in Employment Contract Does Not Violate ESA."