

## **When Resignation IS Resignation** - Ontario decision good news for employers

Can an employee provide notice of resignation (or retirement) and then take it back? In a 2018 Ontario decision - *English v Manulife Financial Corporation*, 2018 ONSC 5135 - the court answered that question “no”, so long as the employer has accepted the resignation and it was not given in the heat of the moment.

Historically, the law in Canada has been that an employee can only rescind a notice of resignation if the employer has not taken a step in reliance on the resignation (*e.g.*, hire or appoint a replacement). Until the employer took such a step the employee could rescind a resignation and the employer had to comply or expose itself to a possible claim for wrongful dismissal. This created great uncertainty for employers seeking to efficiently and effectively run their businesses.

The Ontario Superior Court of Justice has now clarified the law, holding a resignation becomes effective once the employer accepts it even if the employer has not taken any other step (the exception being when resignation is given in the heat of the moment followed shortly thereafter by a change of heart). **Caveat:** An appeal of this decision is scheduled to be heard on March 25, 2019.

### **What happened in *English v Manulife*?**

The employer, Manulife Financial Corporation (“Manulife”), sought to upgrade its customer service department by bringing in a new computer system. Elizabeth English, a 66 year old, 10 year employee, did not want to learn the new system and in September 2016 advised her supervisor she would retire on December 31, 2016. Manulife initially questioned her decision, but ultimately accepted it.

In October 2016, Manulife suspended the conversion to the new computer system. On hearing this, English advised her supervisor she no longer wanted to retire. While Manulife did not accept English’s retraction, no one at Manulife expressly advised English of this. In December, English was asked to stop coming to work in accordance with her resignation. She sued on the basis of wrongful dismissal claiming damages equivalent to 16 months’ compensation.

### **The court agreed with the employer**

English argued she could retract her retirement notice at any time because Manulife had not taken a step after receiving it.

Manulife argued it was entitled to rely on its acceptance of the resignation without the need to take any further action. It relied on more recent cases from Nova Scotia and Ontario in which the courts held the mere acceptance of a notice of resignation is sufficient to make the resignation effective. Manulife

also argued it had neither misled English nor given her any reason to believe her resignation had been rescinded; at most, Manulife had been silent.

The court agreed with Manulife, describing English's position contrary to basic principles of contract law:

*... the Plaintiff's notice of retirement ... reflects a clear and unequivocal intention ... to retire/resign her position of employment ... effective December 31, 2016. Her notice of retirement was accepted ... after a discussion with the Plaintiff that would have allowed the Plaintiff to revoke ... her resignation. .... In essence, what occurred ... was an offer by the Plaintiff to retire as an employee effective December 31, 2016. Her offer was accepted ... and a binding contract occurred between the parties.*

*When the Plaintiff heard that the conversion was no longer going to take place she may have wanted to resile from her notice of retirement. It would have been open to the Defendant to have allowed the Plaintiff to resile from her notice of retirement had the Defendant chosen to do so. The Defendant had accepted the Plaintiff's notice of retirement and was under no obligation to allow the Plaintiff to rescind or resile from her notice. The Defendant could, perhaps, have handled the situation better, by advising the Plaintiff in mid or late October that her notice of retirement was binding on her. There is, however, nothing in the evidence that would suggest that the Defendant lead the Plaintiff along to believe that her intention to resile had, in fact, been accepted by the Defendant. At most, the Defendant was silent about her request. But silence does not equate to acceptance.*

*The Plaintiff's argument that an employee's notice of resignation could be rescinded at any time up until the effective date of retirement, flies in the face of basic principles of contract law. Where there is a contract, i.e. an offer and acceptance, the contract - unless it is ambiguous and open to interpretation, will be enforced by the courts. This is not a case where the Plaintiff was induced in any way, shape or form to tender her notice of retirement. She chose to do so willingly and freely, and was in no way coerced.... Once her notice of retirement was accepted she was bound by it.*

### **Takeaways for employers**

As noted above, an appeal of the decision is scheduled to be heard on March 25, 2019. Until the law is settled, employers should remember this:

#### **1. A notice of resignation or retirement must be clear.**

A hastily-given notice of resignation or retirement may not be upheld by a court. An employer that relies on such a notice does so at some risk.

Best practice: If an employee "resigns" in the heat of the moment or shortly following an incident, proceed with caution. Consider allowing a reasonable period of time to pass, then confirm the resignation in writing.

## 2. Acceptance of a resignation may be sufficient to create a binding agreement

Subject to point 1 (above), assuming *English v. Manulife* remains the law, for a resignation to be binding an employer need only accept it.

Best practice: To minimize the opportunity for disagreement and/or misunderstanding down the road, ensure “acceptance” is clear (written confirmation) and consider taking a further step or action in reliance on the resignation.

To learn more and/or for assistance, contact the employment law experts at Sherrard Kuzz LLP.

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