

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
DAVID KENNEDY)
)
) Plaintiff) Christopher Edwards and Chelsea Packman,
) for the Plaintiff
)
- and -)
)
KINGSTON AREA TAXI LICENSING)
COMMISSION)
) Rahul Soni, for the Defendant
)
Defendant)
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) **HEARD:** January 6, 7 and 9, 2025

2025 ONSC 4706 (CanLII)

CAREY J.

REASONS FOR JUDGMENT

Introduction

[1] This was a relatively straightforward case of alleged constructive wrongful dismissal brought by a long time employee. The plaintiff argues that for 19 years from his initial hiring, on a one-year contract, he worked tirelessly for the defendant (“KATLC”), earning positive performance assessments. He says that that a change in Board leadership brought about an “agenda” to remove Mr. Kennedy subjecting him to micromanagement, belittlement and questioning of his ethics and abilities. In short, a toxic and hostile work environment was created that drove him to take stress leave.

[2] The defendant’s position is that Mr. Kennedy quit. It does not plead in its material that it had cause to dismiss the plaintiff, however argues that the defence evidence highlights “numerous examples of misconduct and dereliction of duty”. It submits that the measures implemented were reasonable and did not fundamentally alter Mr. Kennedy’s employment terms. It offered the plaintiff, prior to the commencement of litigation, an employment contract stipulating severance without cause with one week over the statutory minimum notice period or the equivalent of payment in lieu of notice. When that was not acceptable to Mr. Kennedy, one further vacation day was added to the offer.

Plaintiff's Evidence

[3] Mr. Kennedy recounted his long history with the KATLC. He said he had worked well with previous commissioners and was viewed positively by previous chairs of the Commission. He had been given full authority to run the day-to-day business of the Commission by the previous chair Rod Moffat who complemented Mr. Kennedy for “doing a great job.”

[4] He testified that post December 2019, there appeared to be a determination to remove him from his position, and there followed a campaign of belittlement, micromanagement, and a generally toxic workplace environment.

[5] This situation was confirmed by Mr. Mike Mulrooney, a regular attendee at KATLC meetings, whose wife owned some taxis, who noted a palpable change from the previous professional treatment of Mr. Kennedy to one of public criticism and belittlement. He found the treatment of the plaintiff to be unprofessional, and that watching it made him uncomfortable.

[6] After the December meeting, one of the KATLC board members, Ms. Bridgette Doherty spoke to Mr. Kennedy relaying Mr. O'Connor's intention to have him fired. (KATLC did not call Ms. Doherty to give evidence in this lawsuit).

[7] Among other changes, Mr. Kennedy testified that he was instructed not to consult the KATLC's legal counsel without express permission, authority he had been previously granted by the then chair.

[8] Mr. Kennedy recounted that Mr. O'Connor and Mr. Allan subjected him to angry and aggressive responses to his questioning of the changes. He said he was reprimanded for making an operational decision at a time when there was no active chair or vice chair.

[9] Policy changes were made without Mr. Kennedy's input, he said, despite him being the only person who had experience and understood the day-to-day running of the Commission.

[10] Mr. Kennedy communicated his concerns about his treatment. In response the Board hired a human resources consultant, Ms. Ryall, to investigate his complaints of harassment. The next month, Ms. Ryall communicated with Mr. Kennedy that she found there had been no harassment. She did find that the chair Mr. Allan is “using word choice, tone and manner that has been interpreted as aggressive, inappropriate and disrespectful” and supervisory or sensitivity training was recommended. The report also recommended that Mr. Kennedy's role as general manager have a job description and a third party mediator be appointed to assist in producing clear operating procedures. As well, the report recommended that a mentor for Mr. Kennedy be assigned.

[11] None of these recommendations were communicated to Mr. Kennedy and none were implemented. In the ensuing months, he testified, the harassment by the Commission did not change.

[12] This resulted in Mr. Kennedy writing to Ms. Doherty and indicating that his health was deteriorating, and he was suffering financially.

[13] The response of the Board was to request Mr. Kennedy sign a new employment contract limiting his notice for termination without cause, and payment in lieu of notice, to the *Employment Standards Act* minimum.

[14] When Mr. Kennedy's refused to sign the contract on legal advice, the Board responded by adding one additional vacation day to the offer and then when that was rejected, one additional week of termination notice as a “final offer”.

[15] Mr Kennedy said that all of this behaviour resulted in him going on stress leave on April 27, 2021. This resulted in board members attending at his office to retrieve his computer, his phone and vehicle. His position was posted as open, despite him being on medical leave.

[16] In cross examination, he denied the allegations made by the defendant.

Defence Evidence

[17] The defence called Mr. Allan as a witness and filed affidavits from Kathy Moulton and Joseph Dowser. Mr. O'Connor was not called, nor did he provide an affidavit.

[18] The defence submits that their witnesses highlight numerous examples of unprofessional conduct, misconduct and dereliction of duty that can be summarized as follows:

Unprofessional Conduct

- a. Closing the office during public hours depriving taxi drivers and the public of essential services.
- b. Not providing timesheets as repeatedly requested depriving KATLC's ability to monitor his work.
- c. Not dressing appropriately including wearing a “snow mobile” outfit to court and, thus necessitating a dress code policy implementation, linked personal devices to their resources and damaged their vehicles by transporting materials for his personal business.

Time Theft

[19] KATLC alleges that Mr. Kennedy operated a private construction business using their vehicles and devices for personal gain. They say he failed to issue any enforcement tickets, raising question about how his time outside the office was spent.

Unauthorized Decision Making

[20] In 2020, Mr. Kennedy waived administrative fees causing financial loss to the Commission and harming its reputation resulting in a reprimand. In addition, he failed to enforce vehicle age limits with a majority of taxis being non-compliant.

Confidential Information Mishandling

[21] KATLC says that “stacks of unsecured confidential documents were left in the office exposed to unauthorized access despite the purchase of secure filing cabinets. They also say that when Mr. Kennedy went on medical leave, he failed to establish “contingency protocols, withheld login credentials and deleted organizational data remotely. Significant data losses and disruption were caused.

[22] In summary, the KATLC ‘s evidence was that Mr. Kennedy’s employment was always governed by specific policies and expectations, including submitting weekly timesheets, adhering to by-laws and ensuring organizational compliance with governance standards. What occurred in 2019 was the implementation of updates to its policies.

Analysis

[23] I found Mr. Kennedy’s evidence to be credible, compelling and unwavering. His evidence was not shaken by cross-examination. I accept, where applicable that he was corroborated by Mr. Mulroney.

[24] Mr. Allan’s demeanor throughout his testimony was consistent with the angry behaviour that has been ascribed to him. He appeared to be completely lacking in any insight into how inappropriate and bullying his behaviour was to Mr. Kennedy.

[25] Mr. Allan’s dislike for the plaintiff was clear and palpable during his evidence. He did not hold back his views even with Mr. Kennedy’s spouse in the body of the court. Plaintiff’s counsel suggested that this court should find it significant that this “contemptuous” attitude was not restrained in Mrs. Kennedy’s presence.

[26] In my view, in our adversarial civil trial system, it would be unreasonable to suggest that a witness hold back on testimony they believe to be relevant to avoid hurting someone’s feelings or embarrassing them in front of their family. Mr. Allan’s demeanour throughout his testimony was consistent and it is helpful in assessing not only Mr. Allan’s evidence but Mr. Kennedy’s evidence as to how he was made to feel and the stress he was caused by his interactions with Mr. Allan and Mr. O’Connor as well as others at the commission. Assessing Mr. Mulrooney’s evidence in support of Mr. Kennedy likewise assisted.

[27] The central issue in this trial was whether the plaintiff “voluntarily abandoned his employment and abandoned the employment relationship” as argued by the defendant’s counsel; or was “driven to take anxiety and stress leave” due to the workplace environment that was created by the Board’s harassment, thus constructively dismissed as asserted by counsel for the plaintiff.

[28] The evidence is undisputed that from his hiring in 2002 to December 2019, Mr. Kennedy received positive feedback from the commission, was respected and not subject to reprimand. I am satisfied that this situation suddenly changed with the new commission at the meeting of December 9, 2019. I accept this was without any discussion with Mr. Kennedy or notice to him.

[29] Mr. Allan and Mr. O'Connor joined in presenting a very critical report regarding his work with the commission. I accept that when he attempted to respond in this public forum for the taxi industry he was verbally attacked, told he could not speak and that he was not trusted. It is fair to conclude on the evidence that he was ambushed. I accept that Mr. Kennedy was caught completely unprepared for this belittlement and public humiliation. I accept further that there was no rational basis for the commission members' behaviour. I have concluded as I will set out, that Mr. Allan and Mr. O'Connor started out with a bias against Mr. Kennedy and an unfounded assertion of incompetence that continued to this trial. Ms. Moulton confirmed that she agreed with his assessment.

[30] I will now address the complaints and allegations that the commission has levelled against Mr. Kennedy in justification of their behaviour towards him, despite not pleading in these proceedings that he was terminated for cause.

Unprofessional conduct

[31] I accept that Mr. Kennedy's job required him to be on the road most of the time and that there was a part time assistant. I accept that his cell phone number was prominently displayed at the office so that he could be contacted if required by a member of the public or the taxi industry. I also accept that he had not been required to complete and provide time sheets in his many years of previous employment. The criticism that he appeared in provincial court not properly attired, prompting a dress code policy was simply petty.

Time Theft

[32] There was no evidence that the cell phone was used inappropriately. The filing of 4 years of phone records without any other information was completely unhelpful and, in any event, the new phone policy understandably did not prohibit using the cell phone for personal use. As to the allegation that the plaintiff "failed to issue enforcement tickets", I accept that this was not the case and that as they were collected by the City of Kingston and would not be found in the Commission office. I further accept Mr. Kennedy's evidence that he had been instructed by previous commissions to issue suspensions as they were more effective.

Unauthorized Decision Making

[33] I accept that it was within Mr. Kennedy's mandate to waive the 10-cent fee during the difficult COVID time for the taxi industry. There was no evidence whatsoever that financial or reputational harm was caused to the Commission. I conclude that the reprimand was unjustified. I also accept that under the direction of previous commissions, Mr. Kennedy would use his discretion to allow overaged taxis to remain on the road to relieve the economic pressures on the taxi community at the time. His decision was later brought to the Commission and approved.

Confidential Information Mishandling

[34] There was no evidence to assist as to what the files contained, when they were observed or that the office was ever left unsecure. The observation of stacked files near empty file cabinets

seems more consistent with ongoing efforts by a part time assistant to organize the office while Mr. Kennedy was on the road than mishandling.

[35] I have concluded that the defendant's allegations as set out in the affidavits and testimony of Mr. Allan, Ms. Moulton and Mr. Dowser, communicate much more about the commission's bias towards Mr. Kennedy and their determination to replace him, than revealing any deficiencies in his work.

Constructive Dismissal

[36] I accept that the onus in this case is on the plaintiff to prove on the balance of probabilities that he was constructively dismissed and did not quit. I am satisfied that he has met that onus. The hostile work environment created by the commission members was well documented in this trial and I conclude that Mr. Kennedy was completely justified to take stress leave in order to preserve his mental health. The steps taken by the commission almost immediately upon his taking the leave confirm that it was not interested in the supporting him or changing the work environment. The recommendations of the external investigator hired by the Commission that Mr. Kennedy receive HR support were never implemented.

[37] I am also satisfied that the Commission acted in bad faith in intentionally insisting upon a clause in a proposed new "mandatory" employment contract that would allow his dismissal without cause, with little more than the bare minimum required by law. Their final offer of one additional vacation day of notice can only be seen as intended to insult Mr. Kennedy. There was no repudiation by him of his continued employment. The Commission's actions breached their implied duty to treat Mr. Kennedy with respect and decency. In the circumstances, I find this was an unjustified repudiation of his employment contract and clear constructive dismissal. (See *Patterson v. Lee Munro Chevrolet Ltd.*, 2009 CanLII 23113 (ON SC) at para. 14.

Notice

[38] Mr. Kennedy was 61, employed for 19 years and earning \$83,333.00 with full health benefits at the time he was dismissed by the KATLC. His was a unique position as a Taxi Inspector, General Manager and Municipal Enforcement officer. He was dismissed while on a stress leave necessitated by unjustified treatment by his employer. I have no hesitation in finding that he is entitled to the equivalent of a 24 month notice period plus the value of all benefits, less the earnings he has made by his mitigation efforts. I accept that his efforts as set out by counsel in their brief were appropriate in the circumstances and amount to \$35,058.78 over the 24 month notice period. *Bardal v. The Globe & Mail Ltd.* (1960), 1960 CanLII 294 (ON SC), 24 D.L.R. (2d) 140 (Ont. H.C.), p. 145.

[39] I have concluded that KATLC acted in bad faith in terminating Mr. Kennedy, including tactics described as "strong armish" by Mr. Dowser. I accept that Mr. Kennedy suffered stress and anxiety that required medication and from which he still had not recovered at the time of trial. In the circumstances, I find the request for \$ 25,000 in aggravated damages entirely reasonable and

that amount will be awarded. I am advised that the parties are confident that they can calculate the value of mitigation and benefits. I am indebted to both counsel for their assistance in this case.

Costs

[40] If the parties are unable to agree on costs, they can provide written submissions to me no more than two pages double-spaced on a timetable agreed to by them within 30 days of the release of this decision. I would ask that the court be advised if an agreement has been reached.

Honourable Justice Thomas J. Carey

Released: August 14, 2025

CITATION: Kennedy v. Kingston Area Taxi Licensing Commission, 2025 ONSC 4706
COURT FILE NO.: CV-21-00000208-0000
DATE: 2025 Aug 14

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

DAVID KENNEDY

Plaintiff

– and –

KINGSTON AREA TAXI LICENSING
COMMISSION

Defendant

REASONS FOR JUDGMENT

Carey J.

Released: August 14, 2025