

EMPLOYMENT CONTRACTS: CHOICE OF LAW NOT SAME AS IMPOSING JURISDICTION

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Many employers and dismissed employees incorrectly assume that the law stipulated in a contract determines where legal proceedings can be commenced. The decision in *Christmas v. Fort McKay*, 2014 ONSC 373 (CanLII) confirms that simply selecting which legal regime governs does not end the matter. Instead, jurisdiction needs to be reviewed based on conflict of laws principles as opposed to blind adherence to contract wording.

Background – Contract Refers to Ontario

Prior to his employment with the Fort McKay First Nation, Bernd Christmas ran his own successful Canadian legal practice in Toronto, Ontario. In January 2012, he accepted an offer of employment to work for Fort McKay for a position based in Alberta. The employment agreement which Christmas accepted was signed back and sent by him to the employer via e-mail from Ontario to Alberta. The agreement stated that it was governed by the laws of the province of Ontario.

Termination and Ontario Lawsuit

In May 2012, Christmas was terminated and the employer claimed that there was cause. He proceeded to move back to Ontario to restart his legal practice. A lawsuit claiming wrongful dismissal was then commenced in the Ontario courts.

Employer Obtains Dismissal Order – Alberta More Appropriate Forum

Fort McKay then filed a motion to either stay or dismiss the Ontario claim based on their argument that the Ontario Superior Court did not have jurisdiction. This position, which is referred to as the *forum non conveniens* argument, is based on Ontario having no real and substantial connection to the cause of action.

Christmas argued that the Ontario courts had jurisdiction because the employment agreement had been made in Ontario when he signed back the offer. This argument was rejected, with the Court holding that an employment contract is actually considered to be made in the jurisdiction where acceptance is received. In this case, that meant that the contract was made in Alberta when Fort McKay received the signed offer by email.

A further argument raised by Christmas was that the Ontario Court had jurisdiction *simpliciter* (ie. in any event) based on the Choice of Law provision in the contract. The Court also dismissed this argument, noting that established law refers to other factors based on the defendant's connection to the jurisdiction. In this case, the employer conducted business in Alberta, any allegedly improper acts (ie. the dismissal) occurred in Alberta, and the contract had been made in that province. In these circumstances, imposing Ontario court jurisdiction on Fort McKay solely as a result of agreement to choice of law would, said the Court, unfairly broaden the scope of its contractual agreement.

Takeaways for Employers

This decision highlights the importance of carefully reviewing jurisdiction issues before defending a case on its merits. In many cases, a business will agree to a particular choice of law in a contract based on a variety of reasons, including what is requested or the desire for uniformity. That choice is not, however, necessarily conclusive about where proceedings may be commenced, and which courts or tribunals ultimately have jurisdiction.

by George Waggott

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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