

JUST SAY NO (TO FIXED-TERM EMPLOYMENT CONTRACTS): COURT AWARDS 23 MONTHS' PAY TO FORMER BUSINESS OWNER

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The Ontario Superior Court of Justice has issued another warning to employers who enter into fixed-term contracts with their employees.

Background

In *Tarras v. The Municipal Infrastructure Group Ltd.*,^[1] the employee was a former owner of The Municipal Infrastructure Group Limited ("**TMIG**"). In December 2019, the employee's interest in TMIG was sold to T.Y. Lin international Canada Inc. by way of a share purchase transaction.

In connection with the transaction, the employee entered into a three-year fixed-term employment contract with TMIG. However, the employee was dismissed by TMIG on a "without cause" basis just 13 months into the term. In doing so, TMIG relied on the following early termination clause in the employee's contract:

TMIG may terminate Employee's employment in it's sole discretion for any reason whatsoever without Cause or upon expiry of the Term, by providing Employee with notice of termination, or payment in lieu thereof, or a combination of both, and severance pay, if applicable, pursuant to the Ontario Employment Standards Act, 2000.

The early termination clause also provided for benefits continuation during the statutory notice period, as well as the payment of accrued and outstanding salary and vacation pay.

Nevertheless, the employee commenced an action for damages against TMIG.

Decision

The Court held that the early termination clause was void and unenforceable. In particular, the Court noted that in addition to permitting TMIG to dismiss the employee without cause, the contract also provided for termination – without notice or severance pay – in the event of cause. "Cause" was defined in the contract as:

- the repeated and demonstrated failure on [the employee's] part to perform the material duties of his/her position in a competent manner, which [the employee] fails to substantially remedy within a reasonable period of time after receiving written warnings and counseling from TMIG;
- engaging in theft, dishonesty or falsification of records;
- the wilful refusal to take reasonable directions after which [the employee] fails to substantially remedy after receiving written warnings from TMIG; or
- any act(s) or omission(s) that would amount to cause at common law.

This was problematic because Ontario Regulation 288/01 provides that an employer cannot terminate employment without notice or severance pay unless the employee is “guilty of wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned”. Ontario’s Court of Appeal (“**ONCA**”) has held that this is a much higher standard than the common law meaning of cause. Therefore, the Court found that the “cause” language in the early termination clause unlawfully contravened the legislation. This resulted in all of the termination language in the employee’s contract (including the “without cause” language) being struck down.^[2]

According to the Court, the fact that the employee was a sophisticated party with significant commercial experience was of no relevance to the enforceability analysis. The fact that the employee had negotiated the contract in the context of a commercial transaction, with the assistance of his legal counsel, was also irrelevant.

In assessing the employee’s damages, the Court relied on the ONCA’s decision in *Howard v. Benson Group Inc.* In that case, the ONCA held that – in the absence of an enforceable early termination clause – an employer who dismisses an employee prior to the expiration of their fixed-term contract must pay damages in lieu of all of the employee’s compensation to the end of the term (without any duty on the employee’s part to mitigate). This is significant because the employee in this case admittedly made no efforts to look for alternative work following his dismissal from TMIG.

Therefore, the Court ordered TMIG to pay 23 months of compensation to the employee – including salary, incentive compensation and benefits – despite the fact that he had only accrued a mere 13 months of employment service with TMIG.

Takeaways for Employers

This case serves as another important reminder to employers about the perils of using fixed-term employment contracts. As a general rule, fixed-term contracts should be avoided by employers at all costs, except in cases where it is absolutely necessary for business purposes (such as where a fixed-term is required in order to recruit or retain key personnel). In all other cases, employers should instead limit their liabilities by entering into indefinite-term employment contracts containing enforceable termination clauses.

[1] 2022 ONSC 4522

[2] The ONCA has held that if any part of the termination clause contravenes the Employment Standards Act, 2000 (including Ontario Regulation 288/01 thereunder), it renders all of the termination language in the contract void and unenforceable.

by [Paul Boshyk](#)

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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