

THE FIXED-TERM EMPLOYMENT CONTRACT: IT'S YOUR FUNERAL

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Ontario's Superior Court of Justice has issued a stark reminder of the perils of fixed-term employment contracts. In *McGuinty v. 1845035 Ontario Inc. (McGuinty Funeral Home)*,^[1] released in July of this year, the Court awarded nine years worth of wrongful dismissal damages to an employee whose fixed-term contract was terminated early by the employer.

Background

The employee, Grant McGuinty, was the former owner of the McGuinty Funeral Home in North Bay. In 2012, he sold his interest to a group of buyers for more than \$1.8-million. Among other things, the purchase agreement included a term that Mr. McGuinty would enter into a Transitional Consulting Services Agreement ("TCSA") pursuant to which he would remain in the new owners' employ as their General Manager for a period of 10 years. The TCSA provided that Mr. McGuinty would earn an annual salary of \$100,000 plus commissions, benefits coverage, a company vehicle, gas reimbursement and a golf club membership.

Only eleven months into the TCSA, Mr. McGuinty commenced a medical leave of absence due to stress allegedly caused by issues that arose with the new owners. According to Mr. McGuinty, the new owners had improperly terminated his use of the company vehicle; revoked his gas reimbursement privilege; recruited an employee who was subordinate to Mr. McGuinty in order to track his hours of work; failed to pay him commissions to which he was entitled; assigned him to a desk in the basement kitchen; and abruptly changed the locks to the funeral home without providing a set of keys.

Unable to return to work following two years of medical leave, Mr. McGuinty opted to sue the new owners for constructive dismissal.^[2]

Decision

The Court found that the new owners' course of conduct amounted to constructive dismissal. In particular, the Court opined that when the company vehicle and gas reimbursement were taken away from Mr. McGuinty, there was an effective reduction in salary of \$12,000 or 12%. In the Court's view, this was a "significant" reduction. The Court also held that changing the locks to the funeral home constituted a significant derogation of Mr. McGuinty's ability to act in the role of General Manager.

In assessing damages, the Court relied on the Ontario Court of Appeal's ("ONCA") landmark decision in *Howard v. Benson Group Inc.* In that case, the ONCA held that – in the absence of an enforceable early-termination clause – when an employer terminates an employee prior to the end of his or her fixed-term contract, the employer must pay the employee his or her compensation to the end of the term as “liquidated damages” (without any obligation on the employee’s part to mitigate).

In Mr. McGuinty’s case, the Court found that his fixed-term contract did not contain an early-termination clause. Therefore, he was entitled to receive his compensation to the end of the 10-year term. In particular, the Court ordered the new owners to pay Mr. McGuinty for:

- loss of his annual salary for nine years (\$900,000);
- loss of commissions for 9 years (\$167,173.83);^[3]
- loss of his use of the company vehicle and gas reimbursement for 9 years (\$108,000);
- loss of medical, dental, life and disability coverage for 9 years (\$90,000); and
- loss of the golf membership for 9 years (\$9,000).

In total, the new owners were ordered to pay Mr. McGuinty \$1,274,173.83 in damages plus legal costs.

Conclusion

This case serves as an important reminder to employers: use fixed-term employment contracts at your own risk.

Fixed-term employment contracts can be a practical management tool in certain situations, such as in order to attract key talent or to ensure the completion of a short-term project. In most other cases, however, they can result in unexpected costs and liability for the employer. Instead of offering fixed-term employment contracts, employers should consider limiting their liability by offering indefinite-term employment contracts with enforceable termination clauses.

When fixed-term employment contracts are considered absolutely necessary for business reasons, employers must ensure that they are clearly drafted and – most importantly – contain an enforceable early-termination clause.

by Paul Boshyk and Chiedza Museredza

[1] 2019 ONSC 4108.[ps2id id='1' target='']

[2] Constructive dismissal arises when an employer’s conduct evinces an intention to no longer be bound by the employment contract, and the employee treats that conduct as a repudiation of the contract by the employer.[ps2id id='2' target='']

[3] 5% commission of pre-arranged funerals plus 65% of the marketing allowance.[ps2id id='3' target='']

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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