The Consequences of Fixed-Term Employment Contracts: A Reminder – Vissa c AECOM Consultants Inc.

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Such contracts must be drafted with care.

The Québec Superior Court, in *Vissa c AECOM Consultants Inc.*[1] ("*AECOM*"), has recently made a ruling on certain consequences flowing from fixed-term employment contracts.

Claudio Vissa had worked for AECOM for practically the whole of his active life, from 1973 to 2013. When he reached 65 years of age in 2008, he was obliged to withdraw from the company as a shareholder. He had no particular desire to retire, however, and so AECOM was afraid that he might offer his services to competitors if he left the company.

The parties therefore entered into a five-year contract, extending from his birthday on April 1, 2008 to April 1, 2013. Before the expiry of that initial term, the parties agreed on a few extensions, varying from one to two months, and expiring on December 20, 2013. When the spring of 2013 came around, the parties, foreseeing the expiration of the contract, attempted unsuccessfully to renegotiate its renewal.

Vissa left the company on December 20, 2013 and ultimately concluded a simple contract for services with AECOM on May 1, 2014.

Ten days after returning from performing an assignment abroad for AECOM, in mid-May 2014, Vissa served a demand letter on the company, claiming $1,400,000, *i.e.*, 40 months of compensation in lieu of notice (one month for each year of service). AECOM then suspended the contract for services indefinitely, for breach of trust.

It must be said that Vissa's initial claim, in addition to being catastrophic as regards his relationship with AECOM, was grossly exaggerated and went beyond anything that could have been permitted by the case law, having regard to his years of service, his age and his position in the company. In his lawsuit, Vissa claimed $700,000 (*i.e.*, two

years' salary), plus $50,000 for abuse of rights during his employment and another $50,000 for abusive breach of his contract for services.

Vissa lost, on every head of damages claimed.

The judge first focused on the nature of a fixed-term contract, being a contract with an expiry, specifying either an extinctive term or a resolutory condition. In this case, an extinctive term had been stipulated. It must be remembered that a resolutory condition accomplishes the same purpose, providing, for example, for the termination of a project whose date of completion is uncertain when the contract is concluded. No specific date is needed to determine the "term".

The judge then recalled that it is quite proper to conclude a fixed-term contract, provided that it is [translation] "clear and that the term is provided for unequivocally", citing on that point the recent holdings of the Court of Appeal of Québec in *Commission des normes du travail c IEC Holden Inc.*[2] ("*IEC Holden*").

The *IEC Holden* decision had caused somewhat of a stir by setting aside a series of fixed-term agreements, characterizing them rather as indeterminate-term contracts. The judge deciding *AECOM* therefore made the following necessary distinction.

In *IEC Holden*, the succession of fixed-term contracts and the surrounding circumstances led the Court of Appeal to conclude that the parties' actual intention was to enter into indeterminate-term contracts. It must not be concluded, however, that any renewal of a fixed-term contract automatically transforms it into an agreement with an indeterminate term. In *AECOM*, the renewals, which were limited to one to two months in 2013, did not lead the judge to decide that the agreement in dispute was an indeterminate-term contract.

That being said, the judge did also refer to the recent decision of the Québec Court of Appeal in *Administration portuaire de Québec c Fortin*[3], holding [translation]: "the common intention of the parties must be clear and unequivocal in order to conclude that a contract of employment is a fixed-term agreement", and that [translation]: "an employment contract is, nevertheless, presumed to be a contract with an indeterminate term, unless the contrary is proven."

Such contracts must therefore be drafted with care. The judge in *AECOM* based herself, in particular, on the fact that Vissa's employment contract contained no renewal clause or any prior notice or indemnification clause in case of its early termination. In fact, such clauses may serve as indicators that the contract is really one for an indeterminate term.

Accordingly, it is possible in Québec to enter into a valid and enforceable fixed-term contract. In principle, no notice of non-renewal is then required.

Article 2090 of the *Civil Code of Québec*, however, does provide that: "A contract of employment is tacitly renewed for an indeterminate term when the employee continues to carry on his work for five days after the expiry of the term, without objection from the employer." One must ensure that the performance of the employee's service actually ends on the date stipulated in the contract.

Remember, however, that where an employment contract is breached by the employer without a serious reason, damages are calculated on the basis of the unexpired portion of the term that still remains to run. If AECOM had intended to terminate Vissa's contract without a serious reason after only six months, it would have risked financial exposure to four and one-half years' remuneration. Generally speaking, it is only in exceptional circumstances that a fixed-term contract for more than one year will be appropriate.

[1] 2017 QCCS 1818, Madam Justice Chantal Lamarche. Madam Justice Lamarche was appointed to the Superior Court on April 11, 2014. She formerly practiced employment and labour law at BLG.

[2] 2014 QCCA 1538.

[3] 2017 QCCA 315.

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