Ontario's Court of Appeal Examines Fixed-Term Contracts

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In a decision released on April 8, 2016, Ontario's Court of Appeal (the "Court") provided guidance which will be particularly useful for employers considering entering into fixed-term employment contracts. Specifically, the Court in *Howard v. Benson Group Inc. (The Benson Group Inc.)* 2016 ONCA 256 examined the enforceability of termination provisions in a fixed-term contract and an employee's entitlement to damages where the termination provision is ruled unenforceable.

John Howard entered into a five-year fixed-term contract with Benson Group Inc. ("Benson") starting in September 2012. Benson terminated Howard's employment, without alleging cause, 23 months later. Howard commenced an action for breach of contract and brought a motion for summary judgment seeking compensation for the unexpired portion of the contract — more than three years' salary. The motion was granted, but the judge only awarded common law damages for a reasonable notice period, not for the remainder of the fixed-term.

Howard appealed the decision. The primary question raised on appeal was whether an employee who is employed under a fixed-term contract that does not have an enforceable early termination without cause provision, is entitled to payment of the unexpired portion of the contract upon early termination of the contract. The Court concluded that the motion judge erred in holding that Howard was only entitled to common law reasonable notice damages.

The parties did not contest that the termination provision found in Howard's employment agreement was unenforceable. The Court confirmed that if the parties to a fixed-term contract do not specify a pre-determined notice period (or if the clause specifying that is unenforceable), then an employee is entitled on early termination to the wages the employee would have received to the end of the term. In this case, the fact that the without cause termination provision was unenforceable had no effect on the clear and unambiguous intention of the parties to enter into a five-year agreement. Further, the Court underscored that Benson was a sophisticated party that had drafted the contract. With this in mind, the Court concluded that Howard was entitled to the compensation he would have earned to the end of the employment agreement.

The Court also considered whether Howard had a duty to mitigate his damages. It concluded that, "in the absence of an enforceable contractual provision stipulating a fixed-term of notice, or any other provision to the contrary, a fixed-term employment contract obligated an employer to pay an employee to the end of the term, and that obligation will not be subject to mitigation." The Court reasoned that, by contractually fixing a term to the contract, the parties had also agreed to fix damages or the length of reasonable notice to terminate the contract. Given this agreement between the parties and barring any contractual language related to mitigation, there was no obligation on the employee to mitigate his damages.

The Court's decision in this case reaffirms the importance of carefully drafting termination provisions in employment agreements. Failure to draft enforceable termination provisions and/or explicitly contemplate an employee's duty to mitigate in a fixed-term contract may lead to an award for damages against an employer that are well in excess of what would have been the employee's entitlements to reasonable notice at common law.

By

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