

Ontario's Court of Appeal Examines Fixed-Term Contracts

July 04, 2016

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

[Bethan Dinning](#)

Expertise

[Labour & Employment](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2025 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.