

Court of Appeal Affirms Exercise of Good Faith Requirement in Terminating Contractor Agreement

04 octobre 2018

Background

In *Mohamed v. Information Systems Architects Inc.*, 2018 ONCA 428, Information Systems Architects Inc. (the Company) engaged an independent contractor, Mr. Mohamed, to provide technological consulting services under an Independent Consulting Agreement (ICA) for a six-month project with Canadian Tire. After agreeing to work full-time under the ICA, Mr. Mohamed resigned from his permanent, full-time employment.

As a term and condition of the ICA, the parties had expressly agreed that Mr. Mohamed would be an independent contractor and agreed that the ICA would terminate in the following circumstances:

- **By the Company, at its sole discretion, if it determines that the consultant's work quality to be substandard;**
- If the project with the customer gets cancelled, experiences reduced or altered scope and/or timeline;
- **If the Company determines it is in the Company's best interest to replace the consultant for any reason; or**
- Immediately, upon written notice from the Company, for any breach of the agreement by the consultant.

Canadian Tire's agreement with the Company included a term that the Company would not send any consultant who had a criminal record, except with Canadian Tire's consent. On November 2, 2015, before signing the ICA and being assigned to Canadian Tire, Mr. Mohamed told the Company that he had a dated criminal record from high school. He also agreed to a background security check. On November 4, he again disclosed his criminal record to the Company in a Declaration of Criminal Record Form. On November 5, Mr. Mohamed began work at Canadian Tire. However, when the security check report came back one month later disclosing the criminal record, Canadian Tire requested a new consultant.

Mr. Mohamed requested that the Company consider him for other roles, but instead the Company terminated the ICA on December 10, 2015. Mr. Mohamed sued the Company for breach of the ICA, claiming six months' remuneration, which was the full amount that he would have been paid had the contract been completed. Both parties brought a motion for summary judgment.

Finding in favour of Mr. Mohamed, the motion judge held that his status did not matter – although Mr. Mohamed was an independent contractor and not a dependent contractor or an employee, because the ICA was a fixed term contract, damages were based on the unexpired term of the contract with no duty to mitigate. The company sought an appeal to the Ontario Court of Appeal.

Court of Appeal Decision

Although the Court of Appeal concluded that the termination provision in the ICA was valid and enforceable, the Court dismissed the appeal. The Court confirmed that the **employment law principle in Howard v. Benson Group Inc. (another Court of Appeal decision)** that damages should be based on the fixed term of the agreement with no duty to mitigate, also applied in this independent contractor case. Despite this finding, the Court was clear in stating that it was not deciding whether the principle **from Benson would apply to all fixed-term contracts of independent contractors; only** that it applied in this case.

Takeaways

The takeaways from this case for any company looking to engage an independent contractor or to terminate an independent contractor arrangement are as follows:

- Although a fixed-term independent contractor agreement may provide a terminating party with an unfettered right to terminate the agreement, it has an obligation to exercise its right to terminate the agreement only in good faith.
- When the terminating party does not exercise its right to terminate the agreement in good faith, it may trigger a right to damages that was not contemplated by the agreement.
- Although an independent contractor agreement may not provide for what damages would flow from a failure to terminate in good faith, based on the specific terms and circumstances of the agreement, it may be reasonable to infer that the parties intended that if the power to terminate was not exercised in good faith, then damages for breach would be based on the compensation owed for the remaining term of the agreement, without a duty to mitigate.

Par

[Michelle S. Henry](#)

Services

[Travail et emploi](#)

BLG | Vos avocats au Canada

Borden Ladner Gervais S.E.N.C.R.L., S.R.L. (BLG) est le plus grand cabinet d'avocats canadien véritablement multiservices. À ce titre, il offre des conseils juridiques pratiques à des clients d'ici et d'ailleurs dans plus de domaines et de secteurs que tout autre cabinet canadien. Comptant plus de 725 avocats, agents de propriété intellectuelle et autres professionnels, BLG répond aux besoins juridiques d'entreprises et d'institutions au pays comme à l'étranger pour ce qui touche les fusions et acquisitions, les marchés financiers, les différends et le financement ou encore l'enregistrement de brevets et de marques de commerce.

blg.com

Bureaux BLG

Calgary

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

T 403.232.9500
F 403.266.1395

Ottawa

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

T 613.237.5160
F 613.230.8842

Vancouver

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

T 604.687.5744
F 604.687.1415

Montréal

1000, rue De La Gauchetière Ouest
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

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

T 416.367.6000
F 416.367.6749

Les présents renseignements sont de nature générale et ne sauraient constituer un avis juridique, ni un énoncé complet de la législation pertinente, ni un avis sur un quelconque sujet. Personne ne devrait agir ou s'abstenir d'agir sur la foi de ceux-ci sans procéder à un examen approfondi du droit après avoir soupesé les faits d'une situation précise. Nous vous recommandons de consulter votre conseiller juridique si vous avez des questions ou des préoccupations particulières. BLG ne garantit aucunement que la teneur de cette publication est exacte, à jour ou complète. Aucune partie de cette publication ne peut être reproduite sans l'autorisation écrite de Borden Ladner Gervais S.E.N.C.R.L., S.R.L. Si BLG vous a envoyé cette publication et que vous ne souhaitez plus la recevoir, vous pouvez demander à faire supprimer vos coordonnées de nos listes d'envoi en communiquant avec nous par courriel à desabonnement@blg.com ou en modifiant vos préférences d'abonnement dans blg.com/fr/about-us/subscribe. Si vous pensez avoir reçu le présent message par erreur, veuillez nous écrire à communications@blg.com. Pour consulter la politique de confidentialité de BLG relativement aux publications, rendez-vous sur blg.com/fr/ProtectionDesRenseignementsPersonnels.

© 2025 Borden Ladner Gervais S.E.N.C.R.L., S.R.L. Borden Ladner Gervais est une société à responsabilité limitée de l'Ontario.