



FIELD LAW

Labour and Employment Newsletter

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Terminating Fixed-Term Contracts on Your Terms



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The Court of Appeal of Alberta recently upheld a finding of constructive dismissal of an employee, who although paid to the end of his one year fixed-term contract, was not allowed to work during the final month of the contract.

In *Thompson v Cardel Homes Limited Partnership*, 2014 ABCA 242, the fixed-term contract entered into by the employer and the employee conferred upon the employer absolute discretion to terminate the contract at any time by giving four weeks' written notice and a lump sum payment of 12 months' salary. However, the contract provided no payment upon the end of the one year term.

One month before the fixed-term contract was to end the employer advised the employee by letter that it would not be entering another employment contract with him. The employer also advised the employee in this letter that he would not be required to attend work for the remainder of the term of the contract, although he would be paid to the end of the term. Furthermore, the employee was instructed to immediately return his keys, his card key and his computer password.

The Court of Appeal was asked to determine if the employment was terminated without cause or whether the fixed-term employment contract was simply not renewed. If the employee was terminated without cause, then he would be entitled to the lump sum payment of 12 months salary.

It was found that viewed objectively, the employer's letter and its actions constituted a termination. The Court noted that the employee was not permitted to carry out his duties or exercise his powers as an executive of the company and he was not even permitted to come into the office. These facts supported the employee's position that he had been constructively dismissed. In other words, the employer's actions were determined to be unilateral changes that substantially altered the essential terms of this employee's contract.

Stressing the mutual nature of employment contracts, the Court of Appeal explained that "[i]f [employment contracts] are to be terminated early or there is to be a unilateral change in their terms, both parties must agree, regardless of the duration of the contract."^[1]

In this case, it was determined that the employer failed to obtain the employee's agreement to ending the employment relationship prior to the end of the fixed-term contract. The employer unilaterally denied the employee the opportunity to complete his "tour of duty".^[2]

The Court of Appeal warns employers of two significant risks arising from the modification of employment contracts:

1. When no attempt is made by an employer to obtain an employee's consent to early termination of a fixed-term contract, the employer risks a finding of termination.
2. When there is evidence of a unilateral change in the terms of employment, the employer runs the risk of being found by a court to have terminated the employee without cause.^[3]

These risks should be considered by employers when drafting, modifying or termination employment contracts. Field Law's Labour and Employment Group can help employers with all aspects of employment contracts and offer advice to minimize legal risks when hiring or dismissing employees.

[1] Para 19.

[2] Para 21.

[3] Para 21.

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