



What's New in HR Law

Funeral Home Fiasco: The Foibles of Fixed-Term Contracts

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Bottom Line

While Fixed-term employment contracts may, at first blush, seem like an attractive option, the risks often outweigh the benefits. As highlighted in the recent case of *McGuinty v 1845035 Ontario Inc (McGuinty Funeral Home)*, employers should carefully consider the pitfalls of fixed-term employment contracts when deciding how best to structure their workforces.

Plaintiff Employed on Fixed-Term Transitional Services Agreement

The Plaintiff, Mr. Grant McGuinty, was the previous owner of the McGuinty Funeral Home. The Defendant purchased the McGuinty Funeral Home from the Plaintiff in 2012. As a key term of the corporate transaction, the Plaintiff agreed to continue working for the Defendant for a fixed period of ten years.

The Plaintiff and Defendant entered into a “transitional services agreement”, which stipulated that the Plaintiff would be compensated with an annual base salary of \$100,000.00, plus commissions and various other perquisites, until September 2022. The transitional services agreement stated it could not be cancelled or assigned, and made no provision for the early termination of the contract.

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Plaintiff Sues for Constructive Dismissal

Shortly after the Defendant assumed control of the business, the working relationship between the parties deteriorated. Eleven months into the transitional services agreement, the Plaintiff commenced a medical leave of absence as a result of stress brought on by the workplace conflict.

The Plaintiff ultimately commenced a legal action against the Defendant claiming constructive dismissal. The Plaintiff asserted that the Defendant made the following unilateral changes to the terms of his employment:

- removed his use of the company vehicle;
- revoked his gas reimbursement privilege;
- recruited a subordinate employee to track the Plaintiff's hours and activities;
- failed to remit commission payments;
- moved his workstation to the basement kitchen; and
- changed the locks to the funeral home, without providing him a new set of keys.

Defendant Ordered to Pay \$1.27 Million in Damages

Following a seven day trial, the Court found that the Defendant's conduct resulted in the Plaintiff's constructive dismissal. The Court pointed to the Defendant's revocation of the Plaintiff's company car privileges and gas reimbursement as amounting to a 12% reduction in the Plaintiff's overall compensation. Moreover, the Court found that the Defendant undermined the Plaintiff's ability to fulfill his working duties by tracking his working time and activities, limiting the payment of his commissions, moving his workstation to the basement, and changing the locks to the funeral home.

When calculating the damages owed to the Plaintiff, the Court found that, given the absence of an early termination clause in the transitional services agreement, the Defendant was required to pay the Plaintiff out to the end of the fixed contractual term. In addition, the Court found that the Plaintiff had no obligation to mitigate his damages given the fixed-term nature of the transitional services agreement.

Accordingly, the Court ordered that the Plaintiff receive all compensation owing up to the completion of the ten-year term of the transitional services agreement, including:

- loss of annual salary for nine years (\$900,000.00);
- loss of commissions for nine years (\$167,173.83);
- loss of his use of the company vehicle and gas reimbursement for nine years (\$108,000.00);
- loss of medical, dental, life and disability coverage for nine years (\$90,000.00); and
- loss of golf membership for nine years (\$9,000.00).

In total, the Defendant was ordered to pay the Plaintiff \$1,274,173.83 in damages, plus his legal costs.

Check the Box

This case highlights one of the most significant perils of using fixed-term employment contracts, and serves as a stark reminder of the value of a carefully drafted, enforceable, contractual termination provision.

Employers who use fixed-term contracts should consider implementing the following best practices:

- Ensure the contract includes an early termination provision that meets the applicable minimum employment standards. Without one, an employee who is dismissed part-way through a fixed-term will generally be entitled to compensation through to the end of the contractual period.
- Consider building a mitigation provision into the fixed-term contract to ensure the incumbent is bound by the duty to mitigate their damages. Without such a contractual term, the duty to mitigate will generally not apply in the context of fixed-term contracts.
- Do not allow workers who are subject to a fixed-term contract to work beyond the end of the contractual term without a formal renewal or extension agreement in place. Ensure that any contractual extensions or renewals are adequately documented and likewise incorporate well-drafted early termination and mitigation clauses.

Date: September 7, 2019

Forum: Ontario Superior Court of Justice

Citation: *McGuinty v. 1845035 Ontario Inc. (McGuinty Funeral Home)*, [2019 ONSC 4108](#)

Need more information?

For more information on employment contracts or employee dismissals contact [Derek Klatt](#) at 416-408-5506, or your regular lawyer at the firm.



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