



# What's New in HR Law

## When it Comes to Employment Contracts, Clarity Counts!

February 1, 2024 | By [Anja Djogo](#)

### Overview

A new year brings a new employment law case! In a recent decision released on January 2, 2024, [Boyer v Callidus](#), the Ontario Superior Court of Justice shed light on several crucial aspects of workplace law and emphasized the pivotal role of clarity in employment contracts and company policies. The Superior Court's decision makes it clear that employers must take appropriate measures to ensure their contracts and policies are well-documented and properly communicated to employees, particularly if the terms of those documents are intended to restrict an employee's entitlements.

In this case, the plaintiff, Mr. Boyer, brought a motion for summary judgment against his employer, Callidus, asserting claims related to constructive dismissal, unpaid vacation, deferred bonuses, and stock options. The Superior Court ultimately dismissed Mr. Boyer's claim for constructive dismissal, holding that Mr. Boyer retired voluntarily and that there was no breach of his employment contract. However, the Superior Court found that Mr. Boyer was entitled to damages for unpaid vacation, bonuses, and stock options, as the restrictive terms of the related policies were not clearly communicated to Mr. Boyer via his contract of employment or otherwise.

Mr. Boyer's employment contract was oral, such that there was an inherent lack of clarity with respect to certain terms of his employment. However, the Superior Court's decision stresses that even when employment terms are outlined in a written document, it remains important to explicitly bring restrictive terms to an employee's attention: employers cannot rely on the fact that the terms are written somewhere and available for an employee to read on their own accord.

*This article is for the purposes of only general information and does not constitute legal advice or opinion.*

## Background Facts

Mr. Boyer joined Callidus in July 2009 as Vice President of Underwriting and Portfolio Management, pursuant to an oral employment agreement that, among other benefits, entitled him to four (4) weeks of vacation annually. Mr. Boyer remained in the same role until he retired from the company in 2016.

In 2014, Callidus introduced a deferred bonus program and a stock option plan, both of which Mr. Boyer participated in. The terms of the deferred bonus plan were outlined in a “Deferred Bonus Policy”, which Mr. Boyer was aware of but was never explicitly shown. Under this policy, Callidus withheld a portion of participating employees’ bonuses each year, and then distributed the withheld amounts over the two years following the year in which bonuses were earned. Notably, the Deferred Bonus Plan contained a requirement that any person eligible for such deferred compensation must be employed by Callidus in order to receive the withheld portion of their earned bonus.

When Callidus’ stock option plan was introduced in 2014, Mr. Boyer’s supervisor circulated a document describing the company’s policy on stock option awards, which noted that upon a Callidus employee’s death, the employee’s stock options would vest and be exercisable within 180 days. After reviewing the document, Mr. Boyer asked his supervisor what would happen to stock options upon retirement, which was not referred to in the document. Mr. Boyer stated he was told that the stock options would similarly vest upon retirement.

In 2015, Mr. Boyer informed Callidus of his intention to retire by the end of 2016, citing fatigue, discomfort with the company’s direction, and health issues. By mid-2016, Mr. Boyer stated that a toxic work environment emerged, marked by verbal abuse, threats from the company CEO, and even a physical assault on one of the company’s executives. Mr. Boyer officially retired from Callidus in September 2016. In a letter to Callidus, he attributed his departure to the cumulative effect of a toxic work environment, unaddressed compensation issues, and the company’s failure to fulfill obligations.

Following his retirement, Mr. Boyer did not receive the portion of his bonus that was withheld in 2014 and 2015 and was told that all of his unvested stocks expired as of the date of his retirement. Mr. Boyer also did not receive pay for vacation time that he had accrued from previous years but that that remained unused by the time he retired.

## Legal Proceedings

Prior to the matter being heard on summary judgement, there were a number of related motions and appeals, including a decision from the Ontario Court of Appeal in 2023. However, for the purposes of this update, we will focus only on the outcome of Mr. Boyer’s motion for summary judgment regarding his claim for constructive/wrongful dismissal.

## Summary Judgement at the Superior Court

Mr. Boyer’s claim for constructive dismissal was dismissed by the Superior Court on account of Mr. Boyer’s voluntary retirement.

In addition to this claim, Mr. Boyer also claimed he was entitled to payment for accumulated and unused vacation, damages for unpaid deferred bonus amounts, and damages related to unpaid stock options. These claims, along with the Superior Court’s analysis and findings related to each claim, formed the substance of this case.

### **Claim for Vacation Pay**

Mr. Boyer claimed payment for accumulated and unused vacation totaling twenty-four (24) weeks' salary, under the premise of his entitlement to four (4) weeks of vacation per year, as stipulated under his employment contract.

Mr. Boyer contended that Callidus allowed him to carry over unused vacation, as there was no "use it or lose it" policy communicated to him, and he had consistently rolled over his unused entitlement in response to his heavy workload. Callidus asserted that it prohibits carrying over unused vacation without express written approval, which Mr. Boyer did not seek or receive. Callidus, however, lacked documented evidence supporting its policy and failed to demonstrate that Mr. Boyer was aware of such a restriction.

In the absence of evidence substantiating Callidus' policy and its effective communication to Mr. Boyer, the Superior Court emphasized that an employee's entitlement to vacation (or pay in lieu thereof) is fundamental to an employment contract, and that if an employer wishes to impose specific conditions, those conditions must be clearly communicated. Consequently, Mr. Boyer was awarded damages for unused and accumulated vacation at the time of his retirement, equivalent to 22 weeks' salary based on an annual salary of \$220,000.

### **Claim for Bonus Payments**

Mr. Boyer also claimed damages for unpaid deferred bonus amounts for the years 2014 and 2015, asserting that Callidus withheld a portion of the bonuses he earned in these years and that the withheld portion would have been distributed to him in the two years following 2014 and 2015. Mr. Boyer contended that he did not receive the full amounts he was owed upon his retirement in 2016, nor was the required quarterly interest paid on the deferred sums.

Callidus, citing its Deferred Bonus Policy, argued that Mr. Boyer had to be employed at the time of payment to receive the deferred amounts. However, Mr. Boyer asserted that he was never shown this policy and that there is no evidence of him being made aware of such conditions.

In drawing parallels to a precedent case ([Bain v UBS](#)), the Superior Court underscored that changes to bonus plans must be clearly communicated and accepted by employees in order to form part of their contracts. The Superior Court once again concluded that Mr. Boyer is entitled to damages, awarding him a total of \$525,000, plus 3% quarterly interest for the unpaid deferred bonus amounts.

### **Claim for Stock Options**

Lastly, Mr. Boyer claimed a declaration that his stock options in Callidus had fully vested (i.e., that he earned full ownership of his stock options), or that they would fully vest, at their respective dates, along with a mandatory order for Callidus to deliver the vested stock options.

Mr. Boyer argued that, in the absence of a written agreement stating otherwise, stock options should vest in accordance with Callidus' usual practice. In this case, since Callidus had gone private and the stock options could no longer vest or be exercised, Mr. Boyer sought damages for the lost value of the options. Mr. Boyer pled that it was the usual practice of Callidus to allow vesting of all stock options upon departure. He further pled that stock options were an integral component of his compensation package and that accordingly, they should not be expropriated on his departure.

Callidus relied on various documents which included statements with respect to Callidus' incentive plan and statements with respect to the issuance of stock options, as well as a provision that stated unvested portion of stock options will expire on the date of termination of an employee's employment.

The Superior Court held that the document provided to Mr. Boyer in connection with stock options was silent about what happens to them upon an employee's retirement. As such, when Mr. Boyer's supervisor gave his confirmation that stock options would vest upon retirement, this became a term of his contract of employment. The Superior Court ultimately awarded Mr. Boyer \$1,251,945.58 in compensation for the lost value of his stock options.

## Check the Box

[Boyer v Callidus](#) reminds employers of the importance of clear communication regarding policies and contract terms, underscoring the need for well-documented and communicated policies, especially those intended to restrict employee entitlements. This case also highlights the significance of vacation policies for companies. In this instance, an employee was awarded substantial unpaid vacation claims dating back several years because the company lacked a "use-it-or-lose-it" policy. Employers should be vigilant in implementing clear contracts and policies and ensuring employees are well aware of the terms contained in these documents in order to avoid unforeseen liabilities.

## Need More Information?

For more information, contact [Anja Djogo](#) at [adjogo@filion.on.ca](mailto:adjogo@filion.on.ca) or your regular lawyer at the firm.



PROUD MEMBER OF  
**L&E GLOBAL**  
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ADVOCATES  
for EMPLOYERS  
of CANADA

### Toronto

Bay Adelaide Centre  
333 Bay Street  
Suite 2500, PO Box 44  
Toronto, Ontario M5H 2R2  
tel: 416.408.3221  
fax: 416.408.4814  
[toronto@filion.on.ca](mailto:toronto@filion.on.ca)

### London

252 Pall Mall Street, Suite 100  
London, Ontario N6A 5P6  
tel: 519.433.7270  
fax: 519.433.4453  
[london@filion.on.ca](mailto:london@filion.on.ca)

### Hamilton

1 King Street West  
Suite 1201, Box 57030  
Hamilton, Ontario L8P 4W9  
tel: 905.526.8904  
fax: 905.577.0805  
[hamilton@filion.on.ca](mailto:hamilton@filion.on.ca)

### Kitchener-Waterloo

137 Glasgow Street  
Suite 210, Office 175  
Kitchener, Ontario N2G 4X8  
tel: 519.433.7270  
fax: 519.433.4453  
[kitchener-waterloo@filion.on.ca](mailto:kitchener-waterloo@filion.on.ca)