

Case In Point

Ontario Court of Appeal Upholds \$1.27 Million Damages Award Against Employer for Breach of Fixed-Term Employment Contract

Date: December 22, 2020

In [McGuinty v. 1845035 Ontario Inc. \(McGuinty Funeral Home\)](#), the Ontario Court of Appeal upheld a lower court decision awarding the respondent over \$1.27 million in damages for constructive dismissal.

Background

The respondent had sold his family's funeral business to the appellant employer and entered into a 10-year transitional consulting services agreement (TCSA) in 2012. The TCSA provided for, among other things, a 10 year fixed employment term, corporate expenses, vacation entitlement and hours to be worked. The respondent's duties under the TCSA involved oversight of the general management of the funeral home.

Shortly after the respondent commenced employment with the appellant, trust began to erode and disagreements arose. The new owners enacted numerous changes to the arrangement with the respondent, as outlined in [our earlier post](#) on the lower court decision, and the respondent subsequently went off on a medical leave of absence. He did not indicate a return date.

There was essentially no further communication between the parties until two years later, when a Statement of Claim claiming constructive dismissal of employment and breach of contract was served on the appellant. It was at that time the appellant learned that the respondent considered himself to have been constructively dismissed.

The lower court concluded that the respondent had been constructively dismissed. Absent any termination provision in the TCSA, he was entitled to a damages award representing the payments he would have received the entire ten year term of the TCSA, which were not subject to mitigation efforts. Other damages were also awarded.

Decision of the Court of Appeal

The appellant asserted before the Court of Appeal that the respondent had condoned the actions of the appellant on which the trial judge's finding of constructive dismissal was based. Specifically, it argued that since the respondent had continued to work for a lengthy period of time prior to alleging constructive dismissal, he had condoned his employer's actions and the contract, therefore, had not been repudiated. As a result, the the trial judge was incorrect to find that the respondent had been constructively dismissed.

The Court dismissed this argument. It noted that a finding of condonation usually occurs where an employee has continued to work or resumed work despite the employer's actions. However, the Court stated that continuing or resuming work is not determinative of condonation. Employees must have a reasonable period of time to attempt to resolve workplace problems, even if the period of time is "relatively extended." The Court of Appeal also held that the reason for the lengthy period of time is important, suggesting that where an employee has been unable to work because of the very conduct that establishes a constructive dismissal, a longer period of time may not necessarily mean the conduct has been condoned by the employee.

Accordingly, the Court held that the trial judge had correctly found that the respondent could not be taken to have accepted the new situation because he "did not and could not return to work during that period of time due to depression and anxiety," and that his depression and anxiety had been caused by the appellant employer. The Court of Appeal upheld the trial judge's finding that a constructive dismissal had occurred, noting that its finding of constructive dismissal flowed from the entire course of the employer's conduct.

Conclusion

The Court of Appeal decision continues to highlight the importance of a well-drafted termination provision in both fixed-term and indefinite employment contracts while also emphasizing the importance of taking appropriate steps to avoid a claim of constructive dismissal, especially in situations where an employee may not be actively at work.

The decision also serves as an important reminder that a court will consider all of the facts and perform a contextual analysis in determining whether a constructive dismissal has been established or whether an employee has condoned a change to their terms of employment.