

# Is It The End Of Successive Fixed Term Employment Contracts?



The Court of Appeal of Quebec recently rendered two decisions regarding the possibility that an employment relationship based on successive fixed term contracts may be deemed to be an indeterminate term employment relationship.

Atwater Badminton and Squash Club Inc. c. Morgan

## **Context**

In this decision, the respondent, Mr. Morgan, a professional badminton player, had worked for the appellant, the Atwater Badminton and Squash Club Inc. (the **Club**), for 17 consecutive years, from September 1993 to August 2010. During his employment, the respondent had signed several fixed term contracts whose terms ranged from 9 months to 3 years and he had also worked without a contract between 1998 and 2002.

On June 1<sup>st</sup>, 2010, the Club announced to the respondent that the contractual agreement would end at the expiry of the current term.

The respondent claimed to be entitled to 21 months of reasonable notice and the employer argued that Mr. Morgan did not have the right to receive such notice because he was a party to a fixed term contract that expired on August 31, 2010.

## **Superior Court**

The Superior Court allowed Mr. Morgan's claim. The Court held that the particular circumstances surrounding the employment relationship, more specifically the successive renewals of fixed term contracts concluded between the parties, the informal nature of the discussions between the parties prior to the signing of the employment contracts, the minor nature of the changes made to Mr. Morgan's working conditions during his 17 years of service to the Club and the fact that the non-renewal of the employment relationship was never seriously considered, were circumstances that could lead the Court to deem the employment relationship between the parties to be an indefinite term employment relationship.

Considering that Mr. Morgan's expertise was specialized and that his chances to find a similar job opportunity were limited, as well as his age (47 years old) and his many years of service at the Club (17 years), the Court decided to grant to the respondent the reasonable notice he claimed, namely 21 months, less the 3 months

working notice that had already been given by the Club. The Court also stated that while this notice falls into the “generous side of the spectrum”, it nonetheless remains reasonable under the circumstances.

## **Court of Appeal**

The Court of Appeal confirms the Superior Court’s decision and its reasoning mirrors the one of the Honorable Marie-Anne Paquette.

Regarding the nature of the employment contract, the Court recalled that based on the behavior of the parties and the circumstances of the employment relationship, an employment relationship characterized by successive fixed term contracts may be deemed to be an indefinite term employment relationship.

Another interesting element of this decision is the Court’s comment to the effect that reserve and deference should be given to the lower courts in assessing the reasonable character of a termination notice, even if the notice given is particularly generous. An intervention will be justified only when the decision of the lower court is beyond the acceptable limits established by Quebec case law.

Commission des normes du travail c. IEC Holden Inc.

On August 22, 2014, the Court of Appeal rendered a second decision regarding successive fixed term employment contracts into an indeterminate term employment relationship, corroborating the principles set out in the Morgan case.

## **Context**

The respondent, IEC Holden Inc., is specialized in assembling, manufacturing and marketing electric motors, usually for locomotives. The respondent’s sales depend on orders from its clients, which continually vary in quantity and value. Given this situation, the respondent usually concludes fixed term employment contracts with its employees, with each contract’s duration being equal to the time needed to complete the order for which they are hired. The length of each fixed term contract varies from 1 to 6 months. Employees are generally rehired at the expiry of a contract in order to complete another order. This situation explains why some employees have been working at IEC Holden Inc. for 3 or 4 years without interruption.

Due to a decline in its business in 2009, IEC Holden Inc. proceeded with the non-renewal of several employment contracts.

The Commission des normes du travail claimed, on behalf of IEC Holden Inc.’s employees, indemnities in lieu of notices of collective dismissal, but IEC Holden Inc. alleged that it did not owe these amounts since no notice was required in the case of the termination of fixed term employment contracts.

## **Superior Court**

The Superior Court agreed with IEC Holden Inc. Despite the fact that these contracts were often renewed or that new agreements were entered into following their expiry, the Court concluded that it was clear for both parties that the contracts were not intended to last longer than the term indicated within. Therefore Judge Nadeau was convinced that no agreement had ever existed between the parties other than the fixed term employment contracts.

## **Court of Appeal**

Justice Bich, Doyon and Hilton partially reversed the judgment rendered by the Superior Court and recognized that a successive renewal of fixed term employment contracts may amount to an indeterminate term relationship. However, the Court reiterated that this transformation was not automatic, and that each case had to be evaluated based on its own unique facts. In this regard, the Court specifies that a determination must be made taking into account the nature of each employment relationship by researching the real intention of the parties.

In the present case, the Court concludes that the fixed term employment contracts lead to periodic assignments of different orders, but not to fixed term employment relationships.

Employees were hired without awareness of the fixed term nature of their contracts: they were only informed of this fact at the end of their probationary period. Also, from the employees' perspective, the periodic and repetitive signature of successive contracts was only an administrative formality. In most cases, the documents were signed without any interruption to the employee's workflow and without negotiation or modification of the employee's working conditions. At the expiry of a contract, the employees expected to sign another contract, and IEC Holden Inc. expected them to remain at its employment.

All of these facts, combined with the benefits offered by IEC Holdings Inc. to its employees, such as sick leave, annual vacation and participation in a group plan, allowed the Court of Appeal to conclude that the intention of the parties was to pursue an indeterminate term employment relationship. IEC Holden Inc. was ordered to pay 102,989.85 \$ to the employees as statutory collective dismissal indemnities.

## **Commentary**

The position adopted by the Court of Appeal in these two decisions follows a trend started inter alia in the cases *Société d'électrolyse et de chimie Alcan ltée c. Québec (Commission des normes du travail)* and *Moore c. Compagnie Montréal Trust*. For employers, these recent decisions represent an important reminder given the impact that these precedents may have on the costs of terminating employment relationships.

In IEC Holden, Justice Hilton, in an obiter, expresses concerns with regards to Justice Bich's statements which may have the effect to definitely close the door to renewal of fixed term employment contracts. Justice Hilton fears that these recent decisions will probably make it practically impossible for employers to establish that successive renewals of fixed term contracts does not amount to an indeterminate term employment relationship.

Last Updated: September 22 2014

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