Navigating Fixed-Term Contract Risks: Essential Lessons For Ontario Employers

Are you an employer using fixed-term employment contracts and wondering how to avoid costly legal pitfalls? Ontario's recent Steele v. City of Barrie decision provides key insights on how to use FTECs effectively, minimizing risks like paying out full contracts or unintentionally creating indefinite-term employees. Here's what you need to know.

Fixed-term employment contracts (FTECs) in Ontario are agreements with a set duration, specifying the start and end dates of employment. These contracts are commonly used when employers need to hire employees for specific projects or temporary roles.

The recent Ontario decision in *Steele v. The Corporation of the City of Barrie, 2022 ONSC 7245* ("Steele") has expanded the case law surrounding FTECs and outlined principles that may help protect employers from potential liabilities. Employment lawyers are well aware that FTECs can pose significant risks for employers if not properly drafted. Without a valid early-termination provision, employers may be required to pay out the entire balance of the contract upon termination of an employee under an FTEC. Moreover, if an employee governed by an FTEC works even a single day beyond the contract's end date, they often transition to an indefinite-term employee at law, acquiring the benefits of their full length of service in the event of subsequent termination.

Continuous Fixed-Term Employment Contracts

A major risk associated with FTECs is the frequent practice of extending an employment relationship through multiple successive FTECs. Repeated extensions can lead to employees being classified as indefinite-term employees at law, as these extensions often suffer from contractual ambiguities and procedural errors. In such cases, upon termination, the employee may be entitled to notice of termination or pay in lieu, based on their total length of service with the employer.

The Court of Appeal for Ontario, in *Ceccol v. Ontario Gymnastic Federation, 2001 CanLII 8589 (ON CA)* ("Ceccol"), established that where there are contractual ambiguities or a clear intention between an employer and employee to create an indefinite employment term, successive FTECs will not shield the employer from significant liability if they terminate the employee. This typically results in the employee being entitled to wrongful dismissal damages based on their cumulative length of service.

Steele v. The Corporation of the City of Barrie

The decision in *Steele* helps clarify the boundaries of the *Ceccol* ruling, highlighting when employers can effectively use multiple successive FTECs to terminate an employee without incurring additional liabilities. In *Steele*, the employee worked for the employer from June 4, 2014, to December 31, 2017, as a Manager of IT Planning & Portfolio. The initial FTEC spanned from June 5, 2014, to June 3, 2016, and specified the term of employment as "approximately 2 years." The employment was subsequently extended four times: on May 4, 2016, to December 31, 2016; on November 12, 2016, to July 1, 2017; on June 21, 2017, to September 30, 2017; and on October 5, 2017, to December 31, 2017.

The employer opted not to extend the employment relationship beyond December 31, 2017, effectively terminating the employee. The employee initiated a wrongful dismissal claim, arguing that they had become an indefinite-term employee entitled to reasonable notice of termination or pay in lieu. However, the court in *Steele* found that, despite some drafting flaws, there were no significant ambiguities in the initial FTEC or its extensions, as each agreement clearly labelled the employment as "temporary." Consequently, the employee was not awarded any damages.

The court also noted that even if ambiguities had existed in the FTEC's terms or its extensions, their legal impact was mitigated by the following factors:

1. The job posting, FTEC, and all extensions were marked as temporary positions with defined "up to" end dates.
2. Each extension was granted before the conclusion of the preceding term.
3. The extensions were not pre-determined in the initial FTEC or any subsequent extensions.
4. The employee's evidence supporting an indefinite employment relationship was weak, unlike the circumstances in *Ceccol*.

Conclusion

While I have my views on whether this decision was correctly decided and should withstand appellate review, *Steele* currently sets an important precedent: employers can use FTECs effectively to limit their liability upon terminating employment relationships, provided they utilize FTECs correctly.

If you are considering using fixed-term contracts in your workplace and would like a hand with navigating the liabilities, give us a shout.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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