



An extremely expensive lesson

John Howard worked at an automotive service centre in Bowmanville in a five-year contract. His contract was terminated without cause 23 months in. His contract said that, "Employment may be terminated at any time by the Employer and any amounts paid to the Employee shall be in accordance with the *Employment Standards Act of Ontario*." The Ontario Court of Appeal ruled that this term was too vague to be enforceable. Accordingly, the employee was entitled to be paid for the remaining 37 months(!) of his fixed-term contract.

The Court of Appeal pointed out that the employer had drafted the contract. This is virtually always the case, and highlights the importance of ensuring that your employment contracts (and just as importantly your workplace policies) are drafted by an employment lawyer with sufficient specialized expertise. Over the course of our firm's 13 years of such specialized work, we are often asked to review staff contracts and policies drafted by others, to provide a second opinion to our clients. We find in the overwhelming majority of cases that they are not worth the paper they are written on. As the Court of Appeal pointed out in this case, the employer is free to try to eliminate or limit its severance obligations to employees. However, given the consequences to employees, the employer had better get the language exactly right. There are many thousands of pages of case law on what terms are enforceable and what terms are not. The Courts will use any equivocation, ambiguity or vagueness to find in favour

of the employee, even if, as in this case, the employee walks away with over three years of compensation!

We cannot know what the employer in this case paid to have their contracts drafted. Whatever it was, to that amount they now need to add *several hundred thousand dollars*. When it comes to employment contracts and workplace policies, the bitterness of poor quality remains long after the sweetness of low price is forgotten.

Reminder to Ontario employers: the Bill 132 clock is ticking...

As Ontario employers, each of us has until September 8, 2016, to comply with significant new legal obligations. On March 8, 2016, Bill 132, the Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment), 2016, (the "Act") received royal assent. Among other things, the Act requires that, as an Ontario employer, you update your workplace harassment policy to comply with the Act before the September 8 deadline. (Click here to read [Bill 132](#).)

If you are an existing Practice Protection Package TM client of MBC, this is one of the exceedingly rare times (in our thirteen years of business) that you must update your PPP TM. As a professional courtesy to our PPP TM clients, for a limited time, we will update the Workplace Policy Manual of your PPP TM to comply with the new law for a nominal fee of \$320 (plus HST). Please contact us as soon as possible as we have a large roster of clients who need to have their policies updated and the clock is ticking.

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