

Beware of the fixed-term contract! \$1.3 million awarded to Former Employee

The Ontario Superior Court of Justice recently awarded a whopping \$1.3 million to a former general manager of a funeral home in North Bay, Ontario.

In, *McGuinty v. 1845035 Ontario Inc. (McGuinty Funeral Home)*, the employee was a third-generation owner of a funeral home in North Bay, Ontario. The employee sold the business and entered into a ten (10) year fixed-term employment agreement with the purchasers to work as the General Manager.

Notably, the fixed-term employment agreement did not contain a termination provision. The fixed-term contract set out that the company would provide a vehicle to the employee, and pay for all fuel use - but did not specify that the payment was limited to business use only. Further, in addition to paying an annual base salary, the company agreed to pay commissions on certain funeral package sales.

Shortly after the transaction closed, issues developed between the employee and the new owners. In particular, the new owners enacted the following changes: (1) the employee was required to return the vehicle and repay any personal gas charges; (2) the employee was required to track all hours of work (and in fact, the owners had another employee track his hours of work as well); and (3) the employee was no longer entitled to receive certain commission payments. Furthermore, the new owners changed the locks of the funeral home one weekend without advising the employee and removed his portrait from a prominent spot in the home.

The employee subsequently went off on a medical leave of absence. Approximately two (2) years after the employee commenced his medical leave, he brought a claim for constructive dismissal of employment and breach of contract.

The Court agreed that the changes implemented by the new owners amounted to constructive dismissal. Given that the fixed-term employment agreement did not contain a termination provision, the employee was entitled to receive a damage award representing the payments he would have received in accordance with the contract over the entire ten (10) year term. Of note, given that the fixed-term agreement did not have a termination provision, the payments were not subject to mitigation efforts. When the court factored in the



employee's base salary, commissions, vehicle and fuel use, and other benefits, the total damages award (not including legal fees) amounted to \$1,274,173.83.

This case should serve as a lesson to all employers regarding the dangers of fixed-term contracts and making fundamental changes to employment.

If you are thinking about issuing a fixed-term contract or making any changes to an employee's terms and conditions of employment, we strongly encourage you to reach out to e2r® to speak with an advisor.

On a final note, we wish to remind clients that in addition to ensuring an employee signs the employment contract before their start date, the employee needs to sign back the agreement before the "void after" date, typically set out at the end of an e2r® employment agreement. Failing to ensure this, or agreeing in writing to modifying this date, may result in an unenforceable agreement.

