

Employers Beware of the Risks of Fixed-Term Agreements

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By Daniel Wong, Seth Holland

A recent decision affirmed by the Ontario Superior Court of Justice Divisional Court is a reminder to employers of the inherent risks of relying on fixed-term employment agreements, particularly where employment is renewed on successive terms.

In *Wetzel v. Procom Consultants Group Ltd.*, 2022 ONSC 6056 (“**Wetzel**”), the Divisional Court affirmed a lower court judgment that held an employee subject to numerous successive fixed-term agreements was in reality an indefinite-term employee and entitled to common law reasonable notice after the expiration of their last fixed-term agreement that was not renewed.

Wetzel involved an employee, Ms. Wetzel, who had entered into nine separate fixed-term contracts with her employer Procom Consultants Group Ltd. (“Procom”), a placement agency, over the course of six years. Ms. Wetzel’s last fixed term agreement was for a six-month term and expired on December 15, 2018. In the months preceding the end of the fixed term, Procom provided her written notice on three separate occasions that her employment would end on December 15, 2018 in accordance with the fixed term.

Procom did not offer Ms. Wetzel re-employment after December 15, 2018. As a result, Ms. Wetzel brought an action for wrongful dismissal against Procom claiming she was an indefinite term employee of Procom. On a motion for summary judgment, a judge before the Ontario Superior Court of Justice agreed with Ms. Wetzel, holding that the history of the working relationship and successive fixed term contracts rendered Ms. Wetzel an indefinite term employee. The motion judge held that Ms. Wetzel was entitled to common law reasonable notice and awarded Ms. Wetzel over 5.5 months’ pay in lieu of notice, covering the entire period it took Ms. Wetzel to find new employment. The motion judge also held that Procom could not rely on the written notices provided to Ms. Wetzel, as their practice over the course of her employment of issuing termination notices and then withdrawing them when her employment was extended created uncertainty that rendered the notices ineffective. The motion court decision was upheld on appeal to the Divisional Court.

The finding in *Wetzel* is a reminder to employers of the inherent risks of employing employees on successive fixed-term agreements. Where these fixed term agreements are continually renewed, employers increase the risk that the employment relationship develops into an indefinite-term relationship whereby the employee is entitled to common law reasonable notice. The risk in these scenarios is significantly increased given fixed term employment agreements in the vast majority of cases will not be drafted in a way that adequately limits the employer’s liability upon termination.

If you have questions or need advice with respect to structuring or revising employment agreements, please do not hesitate to contact Daniel Wong or Seth Holland or your regular lawyer in WeirFoulds’ Employment & Labour Practice Group.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

For more information or inquiries:



Daniel Wong

Toronto
416.947.5042

Email:
dwong@weirfoulds.com

Daniel Wong is Chair of the Firm's Employment & Labour Practice Group with a practice that is focused on employment and labour relations.



Seth Holland

Toronto
416.947.5004

Email:
sholland@weirfoulds.com

Seth Holland is an Associate in the Employment and Labour Law Practice Group at WeirFoulds LLP.

WeirFoulds^{LLP}

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035