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## CaseNote

2005, No. 03

### NOTICE REQUIREMENTS IN FIXED TERM EMPLOYMENT CONTRACTS

*Ceccol v. Ontario Gymnastic Federation*  
[2001] O.J. No. 3488 (Ontario Court of Appeal)

*Alguire v. Cash Canada Group Ltd.*  
2004 ABQB 797 (Alberta Court of Queen's Bench)

We have reviewed the above-noted decisions and believe that a brief summary would be of interest to our clients with employees under fixed term contracts.

In *Ceccol v. Ontario Gymnastic Federation* ("Ceccol"), a wrongful dismissal action was brought by Diana Ceccol against her former employer, the Ontario Gymnastic Federation. Ms. Ceccol had been employed with the Federation for over fifteen years as an Administrative Director. Her employment throughout this period was governed by a series of one-year contracts. The employment contracts contained a renewal provision based on acceptable performance reviews. In Ms. Ceccol's sixteenth year of employment, the Federation informed all staff that there would be no renewal or extension of contracts upon their expiration at the end of the current term, and that any employment offers that the company tendered would be in revised format with different conditions. The Federation then informed Ms. Ceccol that her contract would not be renewed and offered her three months salary in severance pay if she agreed to sign a release. She declined to do so and initiated an action.

The Ontario Court of Appeal held that Ms. Ceccol was entitled to reasonable notice prior to termination, which was contrary to the Federation's submission that no notice was required, and confirmed the notice period at sixteen months, reduced to twelve months due to Ms. Ceccol's failure to mitigate her damages. The Court determined that Ms. Ceccol was an "indefinite term" employee, and that when an employer is attempting to avoid the presumption of reasonable notice, any ambiguity or uncertainty will be construed against it. The effect of contemplating extensions to the employment contract and linking renewal to acceptable performance reviews introduced uncertainty as to the term of the contract. The Court took into account Ms. Ceccol's reasonable expectations, and found that her belief that she was hired for an indefinite term was a reliable one.

*Alguire v. Cash Canada Group Ltd.* ("Alguire"), is an action for damages for breach of contract of employment. Alguire was employed for approximately three years and seven months as President. His initial employment contract ran for seven months, after which he was employed for three years through a series of one-year employment agreements. Each year, the contract stated the term of employment, which ran from February until January the following year. Alguire typed up his own contract in the last two years of his employment after all terms had been agreed upon. At a mid-year Executive Committee meeting in 2002, certain issues were raised with respect to his work performance. A week later, the same committee met and Alguire raised the issue of notice concerning his employment status. This was the first occasion upon which he raised this issue, and he received no response from the Committee to his comment. Subsequently, Alguire was advised that his contract would not be renewed and that he should finish the remainder of his current contract at home. His salary was paid until January 2003. Alguire claimed for damages on the grounds that he was an indefinite term employee and entitled to reasonable notice.

The Alberta Court of Queen's Bench held that Alguire was employed under a fixed term contract and therefore was not entitled to reasonable notice. The Court found that, unlike *Ceccol*, the contract in this case contained the clear and unambiguous language required to support a finding of fixed term employment. Each new contract governing Alguire's employment clearly stated the term of the contract as running until January in the following year.

The Court determined that this language was sufficiently clear so as to establish a fixed term of employment and therefore rebutted any presumption that reasonable notice had to be given to the Plaintiff. Alguire's reasonable expectations were also found to support that of a fixed term employment. He understood that if discussions or negotiations did not take place during the year, his employment would be terminated at the end of the fiscal year. His only argument was that by remaining silent as to the nature of the contract, the Company assumed the burden of proof, and did not meet the onus of establishing a fixed term contract through clear and unequivocal language. The Court did not accept this submission.

The above decisions are useful in determining how the courts will interpret employment agreements, and what requirements are placed upon the employer to set out the exact nature of the employment term. These decisions illustrate that an employer can avoid giving reasonable notice, but only if the employment contract clearly establishes a fixed term of employment. Any ambiguity or uncertainty will be construed against the employer and the employment will ultimately be determined to be an indefinite term, entitling the employee to reasonable notice. These decisions complement each other well and together offer a more complete understanding of this issue than either decision would provide standing on its own. Initially, *Ceccol* sets out the requirement that a fixed term of employment must be clearly stated, with no room for uncertainty, and shows how even the slightest ambiguity can result in a finding of indefinite term employment. *Alguire* then provides a situation where the courts were willing to make a finding of fixed term employment, thus demonstrating exactly what the court requires when stating the need for clear and unequivocal language.

If you would like to receive copies of these decisions or discuss their implications more fully, please contact our office.

The comments contained in this Case Note provide general information only and should not be construed as legal advice or opinion. For more information or specific advice on matters of interest, please call our offices at (709) 579-2081.