

## LABOUR AND EMPLOYMENT

## LAW BULLETIN

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April 2003

**ENFORCING MINIMUM NOTICE PROVISIONS IN  
EMPLOYMENT AGREEMENTS**

From time-to-time, the Courts of this jurisdiction reward employers for having the forethought to enter into employment contracts with their employees that limit their obligations to give notice of termination of employment.

In *Mesgarlou v. 3XS Enterprises Inc. (c.o.b. UCC Total Home of Ottawa)*, the plaintiff employee signed an employment contract with the defendant employer which stipulated that “[a]fter the first three (3) months of employment, both parties shall give notice in accordance to the Ontario *Employment Standards Act* prior to terminating the employment agreement.” The plaintiff was a sales manager of slightly less than one year’s service when the defendant terminated him without notice or cause.

The defendant argued that the plaintiff was entitled to only one week’s notice under the *Employment Standards Act* (“the Act”), while the plaintiff argued that he was entitled to damages under the common law since the employment contract was vague and thus void.

Rutherford J. held that the employment contract was valid and therefore the plaintiff was entitled to only the minimum notice requirements under the Act. He found that the “simple language” under the contract was “a sufficiently clear and unambiguous provision as to rebut the common law presumption that reasonable notice is required to terminate the employment.”

The Court emphasized that the plaintiff had an opportunity to review the employment contract; indeed the plaintiff was given a few days to sign the contract, during which time he brought the contract home. The plaintiff used this opportunity to receive professional tax advice. Although he did not seek legal advice, Rutherford J. held that this was the plaintiff’s personal decision that should not void the contract.

Furthermore, the Court found that the plaintiff was a sophisticated and skillful bargainer. In fact, the plaintiff was able to use these skills to double his salary. Judging from the success the plaintiff had in salary negotiations, the court ruled that the plaintiff was not in a vulnerable bargaining position vis-à-vis the defendant. Judgment in only the amount of \$2,477, representing the statutory minimum one week of pay in lieu of notice, was ordered.

## HOW CAN EMPLOYERS ENSURE THAT COURTS WILL UPHOLD NOTICE LIMITATIONS IN THEIR EMPLOYMENT CONTRACTS?

1. It is extremely important to have a clear contract with termination provisions that are unambiguous and complete.
2. Obtaining a signature on the employment contract should never be considered a mere formality. The employee should be given ample time to read, ask questions about and review the contract. An opportunity to seek legal advice should also be provided. This is particularly important for prospective employees who are less sophisticated, or in a more vulnerable position vis-à-vis the employer.

*Written by Darryl Hiscocks and Ivan Luksic, student-at-law.*

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*The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, counsel should be consulted.*

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### WHO WE ARE



**DARRYL R. HISCOCKS**

*Direct Line:* 416.865.7038

*E-mail:* [darryl.hiscocks@mcmillanbinch.com](mailto:darryl.hiscocks@mcmillanbinch.com)

Darryl practises in all areas of labour and employment law at both the federal and provincial level.

*For further information on these or other labour and employment matters,  
please contact one of the lawyers listed below:*

David Elenbaas	416.865.7232	<a href="mailto:david.elenbaas@mcmillanbinch.com">david.elenbaas@mcmillanbinch.com</a>
Frances Fitzgerald	416.865.7792	<a href="mailto:frances.fitzgerald@mcmillanbinch.com">frances.fitzgerald@mcmillanbinch.com</a>
Darryl R. Hiscocks	416.865.7038	<a href="mailto:darryl.hiscocks@mcmillanbinch.com">darryl.hiscocks@mcmillanbinch.com</a>
Harold P. Rolph	416.865.7841	<a href="mailto:hal.rolph@mcmillanbinch.com">hal.rolph@mcmillanbinch.com</a>
Stéphane Y. Thiffault	416.865.7178	<a href="mailto:stephane.thiffeault@mcmillanbinch.com">stephane.thiffeault@mcmillanbinch.com</a>

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## McMILLAN BINCH LLP

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TELEPHONE: 416.865.7000  
FACSIMILE: 416.865.7048  
WEB: [WWW.MCMILLANBINCH.COM](http://WWW.MCMILLANBINCH.COM)