

Change of Employment Contract Implications

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Earlier this year, the Chief Justice of the Ontario Court of Appeal, Justice Winkler, released the unanimous decision of *Wronko v. Western Inventory Service Ltd.* (Wronko), a case that may cause some employers concern on the employment law front. Specifically, employers are now wondering if an employer, on reasonable notice to the employee, has the right to unilaterally change the terms of an employee's employment contract, including changes to benefits.

Mr. Wronko signed an employment contract which entitled him to two years salary in the event that he was terminated without cause. Two years later, the employee was approached by the company's new president and asked to sign an amended employment contract which significantly reduced his severance package; he would receive three weeks' notice (or pay in lieu) for each year of service to a maximum of 30 weeks. Mr. Wronko refused to sign the amended contract. In response, the company provided Mr. Wronko with a memo which informed him that in two years time the new employment terms would come into effect.

During the two-year period, Wronko continued to work for the company. Also during the two-year period, Mr. Wronko re-iterated his position on a few occasions. At the expiry of the two years, he was sent an email requesting that he sign the amended contract. The email also stated that "If you do not wish to accept the new terms and conditions of employment as outlined, then we do not have a job for you." The next day, Mr. Wronko replied saying that he took the position his employment had been terminated, and sued for wrongful dismissal.

The lower court determined that the employer could change the terms of the employment contract, on reasonable notice.

The Court of Appeal disagreed. The Court held that:

"... an employer's unilateral change to a fundamental term of an employment contract constitutes a repudiation of the contract. An act of repudiation carries consequences which depend on how the employee responds to the repudiation."

The Court went on to identify the three options available to an employee in these circumstances:

1. The employee may implicitly or expressly agree to the change in the employment terms, and employment will continue under the new

terms;

2. The employee may expressly reject the change and sue the employer for damages for constructive dismissal; or

3. The employee may reject the new terms and the employer may terminate the employee with notice and offer re-employment on the altered terms. However, if the employer does nothing and allows the employee to continue working, then the employer will be taken to have acquiesced to the employee's position, and the terms of original contract remain valid.

In Mr. Wronko's case, the third scenario applied.

The implications of this decision may affect pension plan sponsors, members and administrators. Pensions are considered a part of an employee's compensation package, so a future reduction in pension entitlements (or other benefits) could constitute a fundamental change to an employment contract. This decision should be carefully considered whenever a plan sponsor intends to unilaterally change the terms of a pension or benefit plan.

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