

Court of Appeal upholds ruling that employee isn't on "fixed term"

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In a decision released on September 6, 2001, the Ontario Court of Appeal upheld the ruling handed down in *Ceccol v. Ontario Gymnastic Federation* (see ["Term contract does not a temporary employee make"](#) on our Publications page). *Ceccol* concerned an employee who was terminated after working continuously for over 15 years for her employer, the last ten years under a series of 12-month contracts.

On May 9, 1997, Ceccol received notice that her employment was to end on June 30 of that year. She was also offered three months salary if she signed a release. Ceccol refused and sued for wrongful dismissal. She won at trial, the judge ruling that the employer's conduct throughout the years had caused her to have a reasonable expectation that she was to be treated as a permanent employee. The employer appealed.

CONTRACT TERMS "AMBIGUOUS"

The Court of Appeal rejected the employer's contention that Ceccol was under a fixed term contract. It held that the terms of the contract relating to its duration were ambiguous, in that, although a term of 12 months was stated, it was also "subject to renewal". Where contract terms could bear two interpretations, the interpretation which best reflects the parties' intention should be chosen, the Court stated.

While fixed-term contracts are permissible and will be enforced if their terms are clear, courts will require "unequivocal and explicit language" to this effect, and will interpret ambiguities strictly against the employer's interest. Noting the serious consequences of finding in favour of the employer on this issue, the Court stated that it would be "particularly vigilant" when employers attempt to "evade the traditional protections of the common law" by claiming that permanent employees are subject to allegedly fixed term contracts.

ESA ARGUMENT REJECTED

The Court also rejected the employer's alternative argument that Ceccol was entitled only to notice under the *Employment Standards Act*. The employer relied on the clause in the contract providing that the parties "agree to abide by the *ESA* concerning notice of termination of employment".

"Not without hesitation", the Court rejected this argument, holding that the provision was not

sufficiently clear to rebut the presumption that Ceccol was entitled to reasonable notice under the common law. (See also ["Clause limiting wrongful dismissal damages to *Employment Standards Act* minimum upheld by Court"](#) on our What's New page.)

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