

10 Things to Consider (and a Bunch of Random Quotes) When Making and Amending Employment Contracts

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Employment Law Fundamentals

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10 THINGS TO CONSIDER (AND A BUNCH OF RANDOM QUOTES)
WHEN MAKING AND AMENDING EMPLOYMENT CONTRACTS

1. EMPLOYMENT CONTRACT IS STILL JUST A CONTRACT – OR IS IT?

No – it is extra special according to the Supreme Court of Canada:

The contract of employment has many characteristics that set it apart from the ordinary commercial contract. Some of the views on this subject that have already been approved of in previous decisions of this Court (see e.g. *Machtlinger, supra*) bear repeating. As K. Swinton noted in “Contract Law and the Employment Relationship: The Proper Forum for Reform”, in B. J. Reiter and J. Swan, eds., *Studies in Contract Law* (1980), 357, at p. 363:

. . . the terms of the employment contract rarely result from an exercise of free bargaining power in the way that the paradigm commercial exchange between two traders does. Individual employees on the whole lack both the bargaining power and the information necessary to achieve more favourable contract provisions than those offered by the employer, particularly with regard to tenure.

. . .

As Dickson C.J. noted in *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313, at p. 368:

Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being.

. . .

The point at which the employment relationship ruptures is the time when the employee is most vulnerable and hence, most in need of protection. In recognition of this need, the law ought to encourage conduct that minimizes the damage and dislocation (both economic and personal) that result from dismissal. In *Machtlinger, supra*, it was noted that the manner in which employment can be terminated is equally important to an individual's identity as the work itself (at p. 1002). By way of expanding upon this statement, I note that the loss of one's job is always a traumatic event. However, when termination is accompanied by acts of bad faith in the manner of discharge, the results can be especially devastating. In my opinion, to ensure that employees receive adequate protection, employers ought to be held to an obligation of good faith and fair dealing in the manner of dismissal, the breach of which will be compensated for by adding to the length of the notice period.

- *Wallace v. United Grain Growers Ltd.*, [1997] 3 SCR 70, para. 91 – 95