



## Probationary Employee Not Entitled to Reasonable Notice

A recent decision from the Ontario Divisional Court has confirmed an employer's right to terminate its employees without cause during a probationary period.

In *Nagribianko v Select Wine Merchants Ltd.*, the employee, Alexander Nagribianko, entered into a written employment contract to work for Select Wine Merchants Ltd. The employment contract not only provided for an annual salary of \$65,000, the right to participate in certain benefit plans and programs, and a monthly car allowance of \$750, it also provided for a probationary period of 6 months.

Nagribianko commenced his employment on May 27, 2013. On November 21, 2013, Select Wine terminated Nagribianko's employment, within the six month probation period, because "after careful consideration", it had concluded that Nagribianko was "unsuitable for regular employment." Shortly thereafter, Nagribianko brought an action against Select Wine for wrongful dismissal.

The trial judge held that Select Wine could not rely on the probation period in the employment contract as it had not provided Nagribianko with a copy of the employee handbook, which expressly mentioned that Select Wine could terminate an employee's employment during the probationary period upon providing written notice or payment in lieu of notice in accordance with Employment Standards Act. The trial judge awarded Nagribianko four months' salary in lieu of reasonable notice.

On appeal, the Divisional Court reversed the decision concluding that the trial judge erred in failing to enforce the clear terms of the employment contract which made reference to a probationary period of 6 months. The Divisional Court held that it was not necessary for Nagribianko to refer to the employee handbook to know that his employment was subject to a 6 month probationary period. In addition, the Divisional Court also stated that the employment of a probationary employee is different in nature from that of a non-probationary employee. The court held that while the standard for dismissal from non-probationary employment is just cause, the standard for dismissal from probationary employment is suitability. In the absence of bad faith, therefore, an employer is entitled to dismiss a probationary employee without notice and without giving reasons.

While it will be interesting to see how this decision will impact contractual interpretation cases going forward, it does highlight several key features of employment law. Firstly, this case illustrates the inconsistency amongst the courts in adjudicating employment law cases, demonstrating the need to be cautious before deciding to litigate. Secondly, it emphasizes the often-overlooked need for properly drafted employment agreements, and how a well-drafted employment agreement, entered into before an employee starts, can avoid potential liability.

Please contact us if you have any questions about the language in your employment agreement and your potential legal exposure.

### Employers take note!

**New Accessibility of Ontarians with a Disability Act (AODA) requirements take effect January 1, 2017.**

**Please contact us A.S.A.P. if you have not yet updated your policies**

