

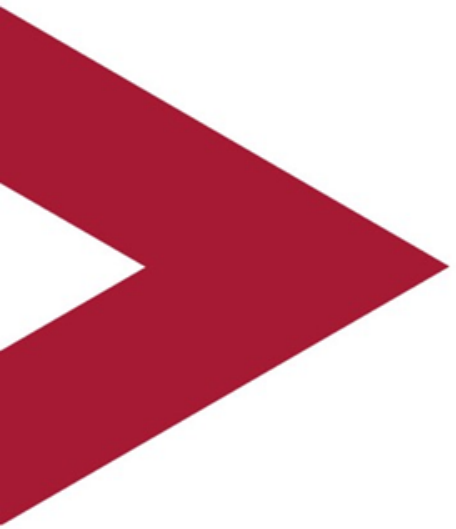


# The Perils of Fixed-Term Employment Contracts

Jamie Watson

# Fixed-term vs indeterminate term

- Most employment contracts are for an indeterminate term with no foreseeable end to the employment relationship.
- Fixed-term contracts are employment contracts that have a definite term and end date.
- Fixed-term contracts may be used for specific projects or to fill a short-term vacancy.



# Pros & Cons

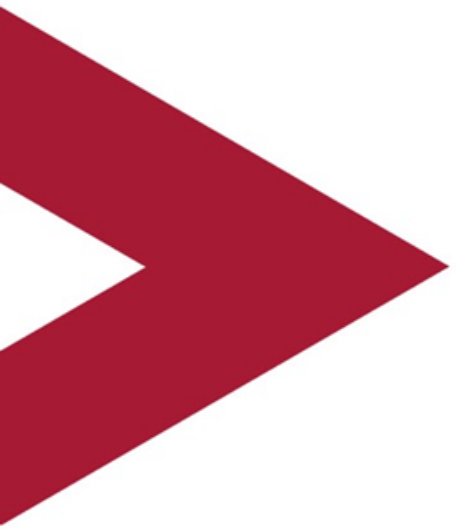
# Fixed-term pros

If drafted properly and fully enforceable:

- Can assist in planning for staffing costs
- Can avoid/minimize notice requirements
- Sets clear expectations between employer and employee

# Fixed-term cons

- Language must be perfectly clear
- Early termination can result in higher costs than notice entitlements under statute and common law
- If the contract is not enforceable, the unanticipated financial impact can be a challenge for employers



# Notice

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## Employment Standards Act:

*31(3) Section 30 (statutory notice entitlement) does not apply where*

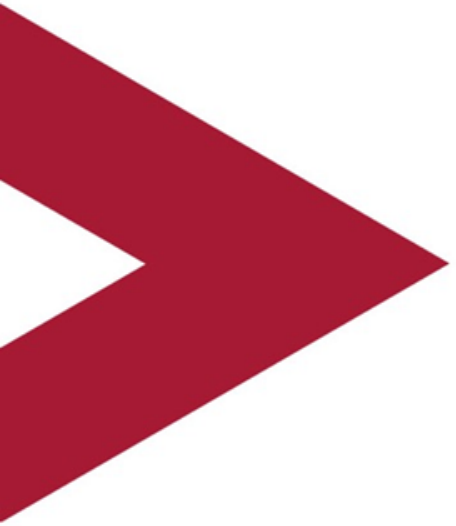
*(a) the termination of the employment relationship is due to the completion by the employee of a definite assignment that the employee was hired to perform over a period not exceeding twelve months, whether or not the exact period was stated in the employment contract;*

*(b) an employee has completed a term of employment that was fixed in the employment contract, unless the employee is employed for a period of three months beyond that period;*

# Notice

- With a fixed-term contract, employees have “notice” from day one.
- However, notice requirements can be triggered if:
  - the employee continues their employment for 3 months following the end of the term without signing a new contract;
  - the language of the contract is ambiguous and it is found to be an indefinite term contract.





# Early Termination Clauses

# Early termination clauses

- Very important!!!
- If there is no early termination clause in the contract and ends the contract before the end of the term, the employer must put the employee in the position that he or she would have been in had the contract been fulfilled.
- This can include wages, benefits, moving costs, and even compensation for the tax implications of early termination.

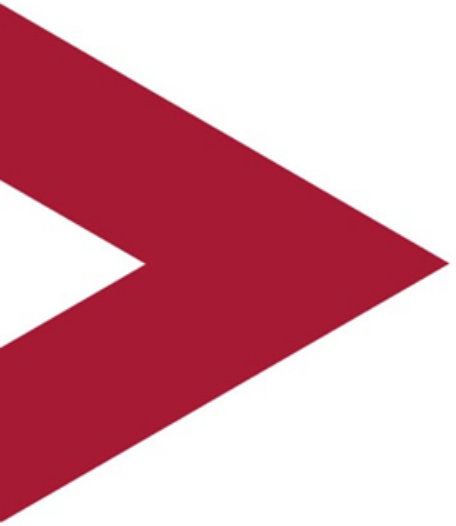
# Early termination clauses

*Schram v Government of Nunavut*, 2017 NBQB 143,  
2018 NBCA 41

- Contract terminated 18 months early
- Employee became disabled 8 months after termination and could not work until a one year after the contract term
- Entitled to wages and benefits for all 18 months, plus LTD benefits for the one year following the contract term during which she was disabled
- Entitled to damages caused by the difference in tax liability between Nunavut and New Brunswick

# Early termination clauses

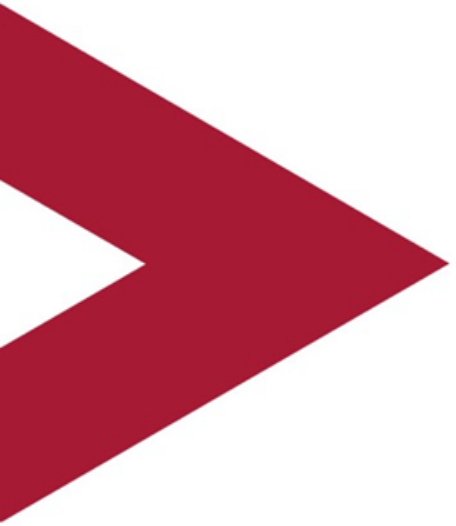
- An employer cannot substitute statutory or common law notice when a fixed-term contract is terminated early, even where that amount is substantially less than the amount owed under the contract.
- Keep in mind that early termination clauses can be triggered by actual and constructive dismissal.



# Constructive Dismissal

# Constructive dismissal

- *Thompson v Cardel Homes Limited Partnership*, 2014 ABCA 242.
- Fixed term contract containing an early termination clause entitling the employee to the equivalent of 12 months pay.
- Employer advised the employee 1 month prior to the end of the contract that the contract would not be renewed and not to come in for the last month of work.
- The Court of Appeal held that the employee had been constructively dismissed so the early termination clause was triggered, entitling the employee to 12 months pay.



# Working After the Term Ends

# Working after the term ends

- Under the ESA, statutory notice requirements are triggered once an employee continues to work for 3 months after their fixed-term contract ends.
- Employers may not avail themselves of the protections under the fixed-term contract after it has expired.
- It is important to keep track of upcoming contract expirations so that a new contract can be executed in advance if the employee is needed for a longer period.





# Take Aways

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- Draft carefully
- Make sure that the expectations are clear
- Include an early termination clause
- Pay attention to the consequences of early or constructive dismissal
- Ensure that there is ample communication between the employer and employee



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