Shapiro v Corus Entertainment Inc, 2014 CanLII 59597 (CA LA)

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IN THE MATTER OF A COMPLAINT
UNDER PART III, DIVISION XVI OF THE *CANADA LABOUR CODE*

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BETWEEN:

Todd Shapiro

-and-

Corus Entertainment Inc.

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Lorne Slotnick, Adjudicator

Representing the Complainant – Matthew Fisher

Representing the Company – Israel Balter

Hearing – Toronto, Ontario, July 4, 2014; written submissions received August 8 and September 23, 2014.

HRDSC/ESDC File #YM2707-9702

PRELIMINARY DECISION

This is a decision on a preliminary motion by the employer to dismiss this complaint of unjust dismissal on the basis that there has been no "dismissal."

Background facts

Todd Shapiro, the complainant, alleges he was unjustly dismissed from his position as a radio co-host. I was appointed to hear the matter by the Minister of Labour, pursuant to Section 242 of the *Canada Labour Code*.

The employer, Corus Entertainment Inc., operates a large number of radio and television stations across Canada. Mr. Shapiro worked for CFNY-FM, a Toronto radio station marketed as "102.1 the edge." He started with the station in 2000 as a promotions assistant; for his first few years, it is agreed that he was an employee of indefinite duration. Starting in February, 2004, Mr. Shapiro signed a series of employment contracts, the first ending in August, 2006, and then one signed in July, 2006 that ran to August, 2009. Mr. Shapiro continued to work past the expiry date of that contract, and in November, 2009, another contract was signed, ending on August 31, 2010. When that date passed, the parties agreed that the terms of the expired contract would continue while the parties negotiated a renewal. A renewal was signed in December, 2010, with a term of September 1, 2010 to August 31, 2013.

Starting with the contract signed in 2006, Mr. Shapiro's role was as co-host of the station's morning program. The show was known as *The Dean Blundell Show,* named for Mr. Shapiro's co-host. Mr. Shapiro was Mr. Blundell's "sidekick." The two were what is sometimes known as "shock jocks," their banter regarded by some as crude, juvenile, ignorant, sexist or bigoted, or a combination thereof. Mr. Shapiro was paid a base salary under the 2010 contract of $200,000, rising to $225,000 in the second year and $250,000 in the third year, a signing bonus, an additional bonus if certain ratings levels were achieved by the show, and other benefits including participation in a group health plan and pension plan.

In June, 2013, Corus offered another three-year contract to Mr. Shapiro, with a term from September 1, 2013, to August 31, 2016. This offer contained further increases in Mr. Shapiro's base salary. However, apparently because of intervening events, it was never signed by the parties. On July 19, 2013, Mr. Shapiro was sent the following e-mail message from a Corus senior manager:

Further to our conversation earlier we want to confirm that we have revoked our renewal offer and we will not be entering into another employment contract with you following August 31, 2013.

We will honour your current contract and pay you to the end of its term which is August 31, 2013.

You will not be required to perform any on air duties to the end of the term of your agreement.

Mr. Shapiro complains of an unjust dismissal under Section 240 (1) of the *Canada Labour Code,* which reads as follows:
240. (1) Subject to subsections (2) and 242(3.1), any person

(a) who has completed twelve consecutive months of continuous employment by an employer, and

(b) who is not a member of a group of employees subject to a collective agreement,

may make a complaint in writing to an inspector if the employee has been dismissed and considers the dismissal to be unjust.

Attached to his complaint, dated September 19, 2013, was a narrative by Mr. Shapiro which sets out his reasons for alleging an unjust dismissal. The portions relevant to this decision read as follows:
My employment has been continuous and of an indefinite duration, but with contracts for terms of between one and three *(sic)* for the purpose of discussing changes to my remuneration at agreed upon intervals. There have been gaps between the contracts and my employment has continued until my new remuneration is agreed upon.

…

Off the air, Ms. *(sic)* Blundell's treatment of me has caused concern for some time, which had only increased within the last year. The treatment has included increasingly abusive behaviour…

On July 11, 2013, Mr. Blundell became enraged at me for having discussed his "management style" with our show's program director. He yelled at me, swore at me, and made a series of threatening comments and punched the wall….

[Mr. Shapiro then states that he raised the matter with Corus senior management.]

A few days later, I had a call with Susan Carpenter *[General Manager, Corus Radio, Toronto/Hamilton]* and Blair Bartrem, the new Program Director. I was told by Ms. Carpenter in response to my complaint, Mr. Blundell has complained about me and decided

that we can no longer work together. It was further explained that because he was the lead host and was thus more important to the success of the show, my employment would be terminated and the offer of continued employment for 3 more years with increased pay was completely revoked.

On Friday July 19, 2013, I received an e-mail from Suzanne Carpenter confirming that my employment was being terminated.

I was shocked that my request for help was responded to with a dismissal of my employment.

In terminating my employment on July 19, 2013, Corus took the following steps:

- I was told not to report to the show or to the company's premises;
- Mr. Blundell announced on air to the public that I was "no longer with the show" and introduced a radio contest to replace me;
- Corus eliminated my profile entirely from its website;
- Corus removed my Edge 102.1 YouTube videos and withdrew my access to the YouTube account;
- Corus removed my podcasts, knows *(sic)* as "Toddcasts", from the station's website and my access to post new ones;
- Corus removed my access to the station's social media including Facebook and Twitter;
- Corus cancelled my building access card so that I could no longer access the building;
- Corus forced me to clean out my desk under the watch of a human resources staff member;
- Corus removed my access to my company e-mail account and left e-mails from fans without any response;

I asked Sonja Woodrow from Corus' human resources department verbally why my e-mail had been immediately cut off without giving me a chance to respond to my fans. In response I was told that this had happened because I had been "dismissed" from my employment with the company.

The 2010-2013 contract signed by Mr. Shapiro contains the following relevant provisions:

As you are aware, your contract of employment with Corus Entertainment Inc. operating as CFNY-FM ("102.1 the Edge") ("Corus") dated September 1, 2009 expired on August 31, 2010, and a contract extension letter dated September 1, 2010, and running until November 30, 2010 was entered into. For the purposes of extending your contract with Corus, we would like to continue to employ you as of September 1, 2010 on the terms outlined in this letter agreement (the "Agreement"). Your signature below signifies your acceptance to the following terms:

…

2. TERM

The term of this agreement will be from September 1, 2010 until August 31, 2013 (the "Term") subject to the termination provisions set out in Sections 5 and 6.

…

5. TERMINATION

(a) Corus may terminate this agreement at any time for just cause without any prior notice, pay in lieu of notice or severance pay. "Just cause" for purposes of this agreement means:
(i) Any behaviour with amounts to just cause under law or statute;
or
(ii) The acceptance of any engagement or employment with any third party during the term of your employment which conflicts with your duties to Corus under this agreement.

(b) Subject to the terms of paragraph 4(a) above *[4 (a) sets out base salary],* Corus may terminate this agreement for reasons other than just cause at any time within its full discretion upon provision of notice to the end of the Term. You agree that if you are provided with an offer that is consistent with this paragraph, you will execute a full and final release of Corus as a condition of acceptance.

(c) You may terminate this agreement at any time upon the provision of six (6) months' of working notice to Corus….

(d) Should you die during the term of this agreement….

6. FRUSTRATION

…

7. NON-COMPETITION/NON SOLICITATION

(a) During the period in which
(i) you are employed by Corus;
(ii) your employment has been terminated, however, you are receiving compensation pursuant to Section 5 (a) (ii) above; or
(iii) you are relieved from performing duties for Corus but are receiving compensation pursuant to Section 5 (b), above (the "Employment Period")
you may not provide broadcasting services similar to or competitive with the services you provide under this agreement…

…

11. RENEWAL

Should you still be employed as of February 1, 2013, Corus will enter into good faith negotiations with you about the terms of your employment, for the period after the conclusion of the Term. Should no negotiations take place or agreement be reached between you and Corus about such terms of employment by April 1, 2013, you will be free to negotiate with any other party. At any time during the period of April 1, 2013 to July 31,

2013, Corus will have the right of first refusal to match any written offer of employment or engagement by any third party. At the end of this period, should no signed agreement be reached between the parties, Corus may choose to negotiate in good faith until the final day of the term of this agreement, August 31, 2013. Should no written agreement be reached between the parties, your employment will end no later than August 31, 2013. This provision is not to be construed as an assurance of continuing employment during the term of this agreement or thereafter.

Parties' arguments

The company's position is simply that I have no jurisdiction to hear this case because there has been no dismissal of Mr. Shapiro: his employment agreement expired on August 31, 2013, as agreed between Corus and Mr. Shapiro, and was not renewed; Mr. Shapiro was given all his entitlements under that agreement, having been placed on a paid leave for the last six weeks of the contract, a situation that is contemplated in the contract itself. Therefore, the company says, there can be no dismissal. In any event, Mr. Shapiro received proper notice under the specific terms of the agreement's termination clause. What happened to Mr. Shapiro was clearly contemplated by the contract. Furthermore, even if there was a dismissal, it is impossible to consider it unjust in circumstances where there has been full compliance with the contract, the company says. The contract also specifically says there is no assurance of employment beyond its August 31, 2013 expiry. The company asks me to dismiss the complaint on this preliminary motion.

In the company's submission, the case law makes it clear that allowing a valid agreement for a fixed term of employment to expire does not amount to a dismissal. In support of this argument, the company refers to *Eskasoni School Board v. MacIsaac* [1986] F.C.J. No. 263 (Fed. Ct. of App.), *Sagkeeng Educational Authority Inc. v. Guimond* [1995] F.C.J. No. 1549 (Fed. Ct., Trial Div.), *Re Lahache and Long Point Band Council* 1992 CarswellNat1995 (Dumoulin) and *Re Van Walleghem and Naotkamegwanning No. 158 NW Angle 33 & 37 Education Authority* 2005 CarswellNat 1680 (Pauls). These cases say that a decision by an employer not to renew a contract of employment does not amount to a dismissal. Without a dismissal, an adjudicator under the *Canada Labour Code* has no jurisdiction to consider a complaint of unjust dismissal.

In support of its argument that even if there was a dismissal it cannot be considered unjust when the terms of employment contract were followed, the company has referred to *Re Halkowich and Fairford First Nation* [1998] C.L.A.D. No. 486 (Deeley), paragraphs 98-105.

The company also relies on *Re Chalifoux and Driftpile First Nation* [2000] C.L.A.D. No. 368 (Wakeling), a lengthy decision that explores the history and rationale for the *Canada Labour Code* unjust dismissal provisions, and follows the same adjudicator's earlier decision in *Re Westcan Bulk Transport Ltd. and Knopp* [1994] C.L.A.D. No. 172. *Chalifoux* was upheld on judicial review 2001 FCT 785 (CanLII), and on appeal to the Federal Court of Appeal 2002 FCA 521 (CanLII). In addition, the company refers to *Re Prosper and PADC Management Co.* [2010] C.L.A.D. No. 430 (Campbell), where the adjudicator states, at paragraph 17 that "a dismissal without cause, but with payment in lieu of notice as required at common law or under the notice provisions of the *Canada Labour Code*, is not an unjust dismissal for the purposes of the *Canada Labour Code*." *Chalifoux, Prosper* and *Halkowich* were all cited approvingly by the Federal Court in *Atomic Energy of Canada Ltd. v. Wilson*

2013 FC 733 (CanLII), a decision that is currently under appeal. The court in that case stated as follows (at paragraphs 34-37):

Therefore, as I see it, the CLC *[Canada Labour Code]* sets out the following regime for dismissals.

An employer can dismiss an employee without cause so long as it gives notice or severance pay (ss 230, 235). If an employee believes that the terms of his or her dismissal were unjust, he or she can complain (s 240). The only exceptions to the general right to make a complaint are where the dismissal resulted from a lay-off for lack of work or a discontinuance of the employee's position, or the employee has some other statutory remedy (s 242(3.1)).

In addition, an employee can complain if he or she believes that the reason given by the employer for the dismissal was unjustified or if the dismissal is otherwise unjust (eg, based on discrimination or reprisal) (s 240(1)). If the adjudicator appointed to entertain the complaint concludes on any basis that the dismissal was unjust, he or she has broad remedial powers to compensate the employee, reinstate the employee, or grant any other suitable remedy (s 242(4)).

The fact that an employer has paid an employee severance pay does not preclude an adjudicator from granting further relief where the adjudicator concludes that the dismissal was unjust. Similarly, there is no basis for concluding that the CLC only permits dismissals for cause. That conclusion would fail to take account of the clear remedies provided in ss 230 and 235 (ie, notice and severance) for persons dismissed without cause.

Also relevant to the situation before me and cited by the company is *Re Klein and Royal Canadian Mint* [2012] C.L.A.D. No. 358 (Peltz), where the complainant's employment was terminated without cause pursuant to the provisions of an indefinite employment agreement that set out his severance entitlements in a no-cause situation. The adjudicator dismissed the complaint on a preliminary motion, saying he agreed with the *Knopp* line of authority. He continued (at paragraphs 43-45):
This is not to say that simply offering the statutory minimum notice and severance or common law notice displaces an employee's right in all cases to obtain section 240 review and remedies.

Part III of the Code should be read broadly and generously with a view to achieving the legislator's objective. There may be instances where an adjudicator should exercise discretion and hear the merits in order to assess whether a dismissal was unjust in the circumstances. To this extent, I believe that the scope for finding an unjust dismissal is broader than suggested in *Knopp* (at para. 71) and some of the authorities that followed *Knopp*.

My decision herein is limited to the present facts. Klein freely entered into an employment contract for the purpose of career advancement. He had the option of remaining in his bargaining unit job. That position carried relative job security and a range of negotiated benefits. Klein was not a vulnerable employee subject to undue employer pressure. The new position paid a substantially higher salary and carried additional responsibilities. It also removed Klein from the protection of the collective agreement and substituted the terms of an individual contract, along with Part III Code protections to the extent applicable. Nothing in the evidence suggested an incapacity on Klein's part to understand these basic elements.

The contract as written was clear and succinct.

The same approach was taken in *Re Sigloy and DHL Express (Canada) Ltd.* [2014] C.L.A.D.
No. 67 (Rose). The adjudicator states that an employer should not be allowed to claim that the termination is without cause when it is not, simply to avoid an allegation of unjust dismissal under the *Code.* In the case before him, he says, there was no indication of impropriety. He dismissed the complaint on a preliminary basis, as did the adjudicator in another case referred to, *Re Paul and National Centre for First Nations Governance* 2012 CanLII 85154 (CA LA), 2012 CanLII 85154 (CALA) (Filliter).

Mr. Shapiro argues that the matter cannot be dismissed on a preliminary motion; a full hearing is required. What distinguishes this case from *Klein* and *Sigloy,* Mr. Shapiro argues, is that those cases were simple matters of no-cause terminations. Here, there is an allegation that there was a reprisal against Mr. Shapiro for complaining about his treatment by Mr. Blundell. Given the allegations made in the complaint, the adjudicator cannot on a preliminary motion decide there has been no dismissal, nor whether there has been proper notice.

The complainant argues that the evidence will demonstrate that the contract did not simply expire at the end of August, 2013; rather, Mr. Shapiro was summarily terminated in July. This is not a situation where the company passively let a fixed-term contract expire, a distinction that is highlighted even in cases such as *Eskasoni*, the complainant argues. Here, the company took active steps to terminate the relationship, including revoking an offer of continued employment. In any event, the employer did not comply with the applicable termination clause, (5 (b)), as that clause does not give the employer the option to provide pay in lieu of notice. By purporting to give notice but taking him off the air, the company violated Section 231 (a) of the *Code,* which says that when notice of termination is given, the employer "shall not thereafter reduce the rate of wages or alter any other term or condition of employment of the employee to whom the notice was given except with the written consent of the employee". These issues themselves dictate that a hearing is necessary to determine whether there was a dismissal, and if so, whether it was unjust, Mr. Shapiro argues.

Despite the succession of fixed-term contracts, this relationship ought to be treated as one of continuous employment, Mr. Shapiro says, noting that there was not a Record of Employment issued until August, 30, 2013. That RoE lists January 15, 2001, as Mr. Shapiro's first day of work and lists Code A – shortage of work – as the reason for issuing the RoE. (The company responds that there is no requirement to issue an RoE unless there is an interruption of earnings.) Issuance of only one RoE was viewed as significant in *Morgan v. Atwater Badminton and Squash Club Inc.* [2012] Q.J. No 8004 (Que. Sup. Ct.), varied on appeal 2014 QCCA 998 (CanLII), and in *Re Asaria and Alexis Nakota Sioux Nation, Board of Education* [2013] C.L.A.D. No. 253 (Gunn).

In support of his argument that the employment relationship should be viewed as continuous since 2001, Mr. Shapiro referred to the following cases where a succession of fixed-term contracts was treated as indefinite employment: *Morgan v. Atwater Badminton,* cited above; *Re Asaria and Alexis Nakota,* cited above; *Ceccol v. Ontario Gymnastic Federation* 2001 CanLII 8589 (ON CA), [2001] O.J. No. 3488 (Ont. Ct. of App.); *Re Gandolfi and*

Hishkoonikun Education Authority [2006] C.L.A.D. No. 198 (Slotnick); *Re McLeod and 1309912 Ontario Ltd.* [2006] C.L.A.D. No. 134 (Slotnick); and *Re Syrette and Head of the Lake School Board* [2003] C.L.A.D. No. 352 (Blaxland).

Mr. Shapiro argues that the contract's termination provisions cannot be enforced because there are circumstances in which the minimum notice of termination under the *Code* would not be provided, and there is no provision for severance pay. In support of this argument, I was referred to *Machtinger v HOJ Industries Ltd.* 1992 CanLII 102 (SCC), [1992] 1 S.C.R. 986; *Mattiassi v. Hathro Management Partnership* [2011] O.J. No. 4774 (Sm. Cl. Ct.); and *Wright v Young & Rubicam Group of Cos.* 2011 ONSC 4720 (CanLII), 2011 ONSC 4720 (Ont. Sup. Ct.)

Also referred to were *Lemieux v. Canada* [1998] F.C.J. No. 786 (Fed. Ct. of App.) and *Re Champagne and Atomic Energy of Canada Ltd.* [2012] C.L.A.D. No. 57 (Roach). In the *Champagne* decision, a preliminary motion involving an employee terminated on a not-for-cause basis, the adjudicator concluded that the employer could not use the notice and severance provisions of the *Code* to avoid a hearing on an unjust dismissal complaint. In so deciding, he differed from the approach taken in *Prosper, Halkowich, Chalifoux* and *Knopp,* all cited above and relied upon by the company.

In response, the company argues that the allegations of reprisal and bad faith are simply an attempt to give the adjudicator jurisdiction where there is none. While the *Wilson, Klein* and *Sigloy* cases allow that a full hearing might be necessary in some circumstances, such as a discrimination or reprisal allegation, the company points out that in none of these cases was there a fixed-term employment contract. Here, Mr. Shapiro, having negotiated and agreed to a fixed term, is attempting to obtain the benefits of an indefinite contract with its protections against unjust dismissal, the company says. Based on the fixed-term nature of the contract, the complaint can be dismissed without a full hearing, the company argues.

Further, the company says, the termination provision of Mr. Shapiro's contract incorporates pay in lieu of notice, which is exactly what the company did when it relieved him from performing his duties for the remainder of the contract. The placing of Mr. Shapiro on paid leave was specifically contemplated in the contract, and cannot violate the *Code,* as the *Code* itself also contemplates payment of wages in lieu of notice.

The company also disputes that cases such as *Ceccol* – where a series of fixed-term contracts have been ruled to be employment of an indefinite nature – apply here. The contract here, in contrast to those in *Ceccol,* for example, is specific as to its term and expiry, and states that it is not an assurance of continuing employment. No reasonable expectation of indefinite employment can be inferred, the company says. In support of this argument, the company refers to *Pennock v. United Farmers of Alberta Co-operative Ltd.* 2008 ABCA 278 (CanLII); *Chambly (City) v. Gagnon,* [1999] 1 SCR 8, 1999 CanLII 703 (SCC); *Lambert v. Canadian Assn. of Optometrists*, 1994 CanLII 7382 (ON SC); *Gibson v Alberta*, 2013 ABQB 695 (CanLII); *Alguire v. Cash Canada Group Ltd*., 2004 ABQB 797 (CanLII); *Flynn v. Shorcan Brokers Ltd.,* 2004 CanLII 2538 (ON SC), appeal dismissed 2006 CanLII 3462 (ON CA); and *Lovely v. Prestige Travel Ltd.,* 2013 ABQB 467 (CanLII).

All these cases upheld the validity of fixed-term contracts, even though in most cases the courts were dealing with a series of contracts. By claiming an unjust dismissal, Mr. Shapiro is essentially trying to force a renewal of a contract that had no guarantee of renewal, the

company argues.

Further, three recent decisions, all involving the Assembly of First Nations, have upheld the *Eskasoni* line of decisions regarding a succession of fixed term contracts, the company notes. These are *Stirbys v. Assembly of First Nations,* 2011 FC 42 (CanLII); *Young v. Assembly of First Nations*, 2011 CarswellNat 6736, overturned by 2012 FC 597 (CanLII), and later brought back to Federal Court in a second judicial review 2013 FC 536 (CanLII); and *Re Fontaine and Assembly of First Nations*, 2012 CarswellNat 2483 (Gray), upheld on judicial review by the Federal Court 2013 FC 352 (CanLII) and on appeal to the Federal Court of Appeal 2014 FCA 5 (CanLII).

As to the validity of the contract itself, the company says the contract's fixed-term nature is a full answer to this argument: no notice or other action is required to terminate a fixed-term contract, nor is there any requirement for termination or severance pay. Even if there is liability for statutory severance pay, its omission is not fatal to its enforceability, the company says, citing *MacDonald v. ADGA Systems International Ltd.,* 1999 CanLII 3044 (ON CA).

Decision

The parties have provided me with a large body of case law, some of it seemingly contradictory, addressing the interrelated issues that arise in this preliminary motion: whether a series of fixed-term contracts will be considered employment of indefinite duration, whether termination of employment at the end of a fixed term contract can be considered a dismissal, and whether, even if there was a dismissal before the end of the contract, it can be considered unjust when the employer appears to have complied with the terms of the contract. Despite the difficulty in reconciling the various cases, two important considerations are clear, in my view: first, that each case must be decided based on its particular circumstances, and second, that, having heard no evidence, I am in no position to properly assess all the circumstances in this case.

Therefore, because I have heard no evidence yet, I have concluded it would be inappropriate to dismiss the complaint at this stage. Certainly, there have been adjudicators who have been prepared, in the circumstances of the cases before them, to dismiss *Canada Labour Code* complaints on a preliminary basis. The *Sigloy* case relied on by the company here is a notable recent example. *Sigloy* did not involve a fixed-term contract, but did involve a written employment contract which specifically set out notice and severance requirements. The employee was terminated on a no-cause basis and paid in accordance with the contract. In dismissing the complaint on a preliminary basis, the adjudicator concluded as follows:

Summarizing, the Complainant entered into a valid and enforceable contract of employment, the terms of which were in compliance with the Code. Further, the Complainant's initial complaint does not allege the dismissal involved discrimination, reprisal or bad faith. In the circumstances, I find I am without jurisdiction…

Here, however, the complaint does allege reprisal. As the complainant points out, this is not a simple case of the employer announcing that it was letting a fixed-term contract expire without renewing it. Even though the parties agree that Mr. Shapiro was paid until the end of August, 2013, this complaint is not simply about what happened at the end of the term of the contract. As set out above, Mr. Shapiro has made statements about what happened in

July and prior. Those allegations appear to be relevant to the question of whether there was in fact a dismissal.

Two important and simultaneous events that occurred before the expiry of the contract are apparent from the documentation I have received on the preliminary motion: Corus revoked an offer of continuing employment that had been given to Mr. Shapiro in June, 2013, and the company also took Mr. Shapiro off the air. Whether these and the surrounding circumstances amount to a dismissal, and, if so, whether that dismissal was unjust, are matters that in my view should be determined only after hearing the evidence.

Mr. Shapiro makes statements about his view of the reasons for the company's actions, as set out above in his complaint. It is not appropriate to comment on these allegations or to comment further on the documentation before hearing any evidence, except to say that the material now before me confirms that this was not necessarily a simple case of a fixed-term contract being allowed to run its course, and raises the possibility that Mr. Shapiro was unjustly dismissed. That possibility alone warrants a full hearing on this matter.

Mr. Shapiro argues that his succession of fixed-term contracts must be considered indefinite employment. The employer disagrees. That issue, and the other arguments put forward, including the validity of the contract itself and the circumstances surrounding its negotiation and the aborted negotiation of the 2013-16 contract, can be decided only after hearing the evidence. But even if the company succeeds in its argument that the succession of contracts cannot be considered indefinite employment, this does not mean that there cannot have been a dismissal, including an unjust one, prior to the expiry of the contract. The following passage from the first Federal Court decision in *Young,* cited above, confirms that point (paragraph 32-35):

I am also concerned with the adjudicator's statement that because Mr. Young was always employed under fixed-term employment contracts, the adjudicator therefore had "no jurisdiction to inquire into the justness of the employer's decision to sever the employment relationship".

Access to the Canada Labour Code adjudication process is not limited to indeterminate employees who believe they have been unjustly dismissed. It is also available to individuals employed under fixed-term contracts, as long as they meet the statutory requirements in the Code, including the requirements that they have completed twelve consecutive months of continuous employment with the employer and are not governed by a collective agreement.

However, before determining whether a dismissal is "unjust" under section 240 of the Code, the adjudicator must first be satisfied that there was in fact a "dismissal" within the meaning of that section. As was noted earlier, there will be no "dismissal" for the purposes of a section 240 complaint where an employer simply does not renew a contract for a fixed term of employment.

The crucial question for the adjudicator was whether Mr. Young was "dismissed" or whether the term of his employment contract had expired and was not renewed. The answer to this question required the adjudicator to make a finding in clear and unmistakable terms as to when Mr. Young's contract of employment was to expire. This he failed to do.

For the reasons above, I have concluded that this complaint cannot be dismissed on a preliminary basis before the evidence is heard. This does not mean that the company has

failed in its argument that there has been no dismissal; rather, I will not decide that point until hearing the evidence. When the hearing resumes, it will still be up to Mr. Shapiro to establish that there has been a dismissal. I would ask the parties to contact me to arrange hearing dates.

_____
Lorne Slotnick, Adjudicator
October 8, 2014