



Limiting your notice obligations through an employment contract

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A recent decision of the Ontario Superior Court of Justice sheds some light on how employers can limit their liability for reasonable notice through an employment contract - at least where it can be shown that the employee is aware of the terms and accepts them. *Nikolic v. Computer Associates* (June 22, 2000) is of particular interest to employers in the high technology sector, where labour is skilled, valuable and highly mobile.

Milina Nikolic was terminated without cause after just over a year's service. She was a skilled sales representative with over 20 years' experience at Dun & Bradstreet, where she rose to be National Account Representative.

In her wrongful dismissal action, Nikolic alleged she had been given inadequate notice of termination. The employer responded that she had been given what was called for in her employment contract. The relevant notice provision was contained in the letter sent by the employer to Nikolic offering her employment. This provided that "[the employer] may terminate your employment for any reason whatsoever, by satisfying the notice and severance pay requirements in the applicable employment standards legislation. ... No other notice or severance whatsoever either at common law or other statutes shall be payable ... to you."

It was agreed that Nikolic had received the minimum notice pay sufficient to comply with the *Employment Standards Act*. The issue, therefore, was whether the employer could rely on the contract to pay less than reasonable notice under the common law.

The Court held that it could. Had the contract provided that *no* notice would be provided, it would have been an invalid contract, and Nikolic would have been entitled to reasonable notice. However, employers may, through a contract, bind employees to accept the statutory minimum notice, provided it is not unfair or unconscionable to do so. Because the Court found that Nikolic was aware of her rights and her employer's corresponding obligations when she signed the contract, it held that she could be dismissed with the statutory minimum notice.

For further information, please contact [Lynn Harnden](#) at (613) 563-7660, Extension 226.