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# When does an Employer's Breach of Contract Make a Non-Competition Clause Unenforceable?

Non-competition clauses in employment agreements pose challenges for employers who seek to enforce them. Non-competes have to be reasonable in scope at the time they are agreed to; a perpetual or geographically unlimited non-compete covering a broad range of competitors is almost certain to be unenforceable. However, as the recent B.C. Supreme Court decision in *P.R.I.S.M. v. Kramchynski* highlights, an employer seeking to rely on a non-compete against a former employee must also uphold their obligations under their contract with that employee.

In that case, Powell River Industrial Sheet Metal Contracting Inc. ("Prism") sought damages against a former employee, Darryl Kramchynski, for quitting his employment at Prism and accepting employment with a competitor. Kramchynski had previously owned another business, Technicool Refrigeration Services Inc., that involved refrigerator, air conditioning and furnace repair. Prism purchased Technicool from Kramchynski in 2010 for \$36,000. As part of that sale, Kramchynski agreed to continue to work at Prism; he also agreed that he would not compete or be employed in the refrigeration business within the Powell River School District for three years.

After the sale closed, Kramchynski became employed by Prism and was paid on an hourly basis. Kramchynski's hours declined over time. In March 2012, he quit and went to work for a competitor. Prism sued Kramchynski for breach of the non-compete; Kramchynski's position was that the non-compete was unenforceable because Prism had failed to provide sufficient work for Kramchynski to earn a reasonable income.

The B.C. Supreme Court sided with Kramchynski. Although Kramchynski was not promised specific hours of work in his employment agreement, the Court held that it was necessarily implied in the agreement that Prism would provide Kramchynski with sufficient hours of work to gain certain other benefits that were to be provided under the agreement. Holding that a restrictive covenant such as a non-compete must be examined in the context of the overall agreement, the Court held that

Prism could not rely on the non-compete when it failed to provide Kramchynski with sufficient work. Although the Court held that the non-compete was reasonable at the time it was negotiated, it became unreasonable when Prism breached its own obligations.

P.R.I.S.M. v. Kramchynski highlights that the enforceability of a non-compete will not depend only on the reasonableness of the clause at the time it is negotiated. Rather, it will also depend on the conduct of the parties leading up to the alleged breach of the non-compete. Employers wanting to rely on a non-compete should ensure that they do not breach any explicit or implicit other obligations to their employees which the employee can rely on as a basis for avoiding the non-compete.