Case Update: Mason v. Chem-Trend

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In our last *Employment Notes*, we told you about a decision of the Ontario Court of Appeal in *Mason v. Chem-Trend Limited Partnership*. This case dealt with the enforceability of a non-competition clause in the employment context.

Mr. Mason sought the court's guidance on whether and to what extent he was free to compete with his former employer. The non-competition clause at issue was for a period of one year following the end of Mr. Mason's employment and prevented him from engaging in "…any business or activity in competition with the Company by providing services or products to, or soliciting business from, any business entity which was a customer of the Company during the period in which I [Mr. Mason] was an employee…".

The Ontario Court of Appeal ruled that the clause was not reasonable and that there were other less restrictive ways in which the employer could (and in fact did) protect itself. The company sought leave to appeal the Court of Appeal's decision to the Supreme Court of Canada.

On January 12, 2012, the Supreme Court of Canada denied Chem-Trend's request for leave. As a result, the decision of the Ontario Court of Appeal is the final substantive decision. As we noted in the last edition, restrictive covenants should be drafted with care and should not be treated as boilerplate documents as they are scrutinized closely by courts and can often be hard to enforce. If the interests of an employer are vital enough to warrant the use of restrictive covenants, it makes sense to put in the effort and draft a clause that has a chance of withstanding the scrutiny of the Court.