

Current Workplace Issues

The Importance of Terms and Conditions of Employment

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A November 1994 decision of the Ontario Court of Appeal is a strong reminder of how important it is to set out the terms and conditions of employment at the time the initial agreement to hire takes place.

In *Francis v. Canadian Imperial Bank of Commerce*, the Plaintiff, after two interviews with the bank and the completion of an application form, received the following offer of employment by letter dated June 9, 1978:

"Referring to our letter of May 12, 1978 and in light of our discussions, it is a pleasure to make a formal offer of employment at a salary of \$17,000.00 per annum plus the usual employee benefits. This offer is subject to receipt of a satisfactory reference from the Jamaica Development Bank.

As discussed, it would be our objective to appoint you to a management position after an orientation period of 9 to 12 months divided between in-branch training and a Regional Credit Department attachment.

Your confirmation of our offer, in writing, would be appreciated. Should a starting date of July 4, 1978 be acceptable, please report to the writer at 9:00 a.m., 12th Floor, Commerce Court \Vest for documentation.

We look forward to hearing from you shortly. Should you have any further questions, please do not hesitate to contact either the writer or Mrs.

This is the sort of innocuous letter which employers have frequently used at the time of hire and reflects the pleasant expectation that all will be well in the newly-undertaken employment relationship. In this case, the Plaintiff unconditionally accepted the bank's offer of employment on the terms and conditions expressed in the letter. A satisfactory letter of reference was obtained by the bank prior to the start of the Plaintiff's employment.

When the Plaintiff attended for work on July 4, 1978, he was presented with numerous

forms and documents, one of which was a document entitled "Employment Agreement." He later indicated that he did read this document over before signing it. The Employment Agreement limited the

Plaintiff's entitlement on termination to three months' notice or compensation in lieu.

After nine years, the Plaintiff's employment was terminated. The circumstances need not concern us here, but they were decidedly unpleasant. When the Plaintiff sued his employer for wrongful dismissal, the bank raised the Employment Agreement in its defence and alleged that the Plaintiff was entitled only to the three months' notice or compensation in lieu specified in it. The bank relied on its position that the contract of employment between the bank and the Plaintiff was not concluded until the Plaintiff completed the documentation presented to him on his reporting to work as referred to in the letter of June 9, 1978.

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The Court rejected that argument, holding that a reference letter from the Plaintiff's previous employer was the sole condition stipulated in the offer of employment letter of June 9, 1978. There was no term or condition pertaining to termination in exchange of correspondence between the parties. The Employment Agreement, which did purport to limit the notice owed the Plaintiff and which the Plaintiff had signed at the time he reported to work, did not bind the Plaintiff, because the executed document was a unilateral attempt by the employer to alter the existing terms of employment that the parties had already contracted for. There was no additional consideration given to the Plaintiff for this significant alteration to the terms and conditions of his employment. The law requires new or additional consideration to support the variation of an existing agreement.

An employer should not simply assume that he or she can add to or vary the initial hiring agreement up to the time when an employee reports for work. At the time that the Plaintiff accepted the letter of June 9, 1978, the bank was already bound to employ him on the terms and conditions that letter contained.

The message for employers is that, if a formal employment agreement is not fully drafted at the time the first exchange of written documentation is prepared, the fact that it will be required of the employee, on terms satisfactory to the employer; should be specifically incorporated into the offer of employment. An employer should specify the required terms in the offer letter or stipulate that the offer is conditional upon the prospective employee agreeing to accept and to be bound by the terms of the formal employment agreement. To avoid later misunderstanding, the terms and conditions which will make up the formal employment agreement should be provided to the prospective employee at the outset in order to avoid any later question about the intended terms.

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