



## CaseNote

2005, No. 02

### **Entering into an employment contract requires care...and consideration**

*Hobbs v. TDI Canada Ltd.*

Ontario Court of Appeal, 246 D.L.R. (4th) 43

Our firm recently reviewed this case and thought a brief summary would be of interest to our employer clients. The legal issue central to this case was whether or not an employer could rely on the terms of an agreement it asked an employee to sign after he was hired.

Hobbs was a salesperson hired on a commission basis as set out in a letter drafted by the employer, TDI Canada. The letter of employment was drafted following oral negotiations between the parties, during which the details of Hobbs' rates of pay and commission were discussed and agreed upon. The letter from TDI contained the terms of the agreed upon rate of pay, but stated that the details of the payment of Hobbs' commissions would be contained in a separate document.

Following the commencement of his employment, TDI approached Hobbs and asked him to sign a non-negotiable document called a "solicitor's agreement". Among other things, this second agreement stipulated that any salesperson that resigned would have no claim to commissions with regard to any billings made after their date of termination. Hobbs signed the solicitor's agreement. After working for TDI for five months, Hobbs had received no payments from TDI beyond an agreed upon monthly draw against commissions of \$5,000. By this time, Hobbs had earned a considerable amount in sales commissions. Hobbs resigned from his position and brought an action against TDI for unpaid commissions. TDI relied on the above clause of the solicitor's agreement to refuse to pay Hobbs any commissions. At trial, the Court upheld TDI's decision to pay Hobbs only the amount of his monthly draw against commissions as of the date of his resignation.

On appeal, the Court overturned the decision of the trial judge, finding that he had made an error in taking the original employment letter and the subsequent "solicitor's agreement" together as constituting one single contract of employment. The Court stated that nothing in the original letter of employment had indicated that Hobbs would be asked to sign any additional contractual documents, and that Hobbs had agreed to work for TDI based solely on the terms orally negotiated, as set out in the first letter. Further, the Court found the "solicitor's agreement" to be inconsistent with the original contract of employment, in that it would have allowed TDI to unilaterally change Hobbs' commission rates at any time. This conflicted with the firm rates of commission that the parties had agreed to during oral negotiations. Finally, the Court held that the employer had given no additional payment to Hobbs to obtain his signature to the solicitor's agreement, such consideration being an essential ingredient of any contract.

In closing, the Court stated that employers who wished new employees to sign a standard employment agreement could incorporate the terms of such an agreement into an offer of employment by stating in it that the offer was conditional on the prospective employee agreeing to accept the terms of its standard form agreement, a copy of which should be attached to the offering letter.

Should you wish to receive a full copy of this decision, or discuss its implications, feel free to contact our office at your convenience.

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For more information, or specific advice on matters of interest, please call our offices at (709) 579-2081