

## EMPLOYERS' ALERT

March 2007

After parties fail to make the terms of employment clear - the Court steps in and does it for them!

### ***Goodzeck v. Bassett Petroleum Distributors Ltd.***

A recent case from the Northwest Territories illustrates the importance of ensuring that the terms of employment are clearly defined at the time an offer of employment is made. Failure to do so may result in a court imposing what it feels is fair. This may not necessarily be what the employer had intended.

Mr. Goodzeck was hired as a certified general accountant under the terms of an oral employment agreement. Goodzeck agreed to an annual salary of \$36,000 plus a bonus of 25 percent of the company's profits.

During his employment, Goodzeck gained more authority over the operation of the company, although the signing authority always remained with Mr. Bassett, who had hired him. Bassett spent little time in the office and left the financial issues to Goodzeck.

When it was time to pay out Goodzeck's yearly bonus, Goodzeck interpreted the bonus payment to be 25 percent of the profits of the company before the payment of taxes. He performed this calculation and sent it to Bassett for approval. Bassett always approved the bonus payment, which Goodzeck received from 1998 to 2002. In order to assist the company, rather than cash the bonuses, Goodzeck loaned the money back to the company by creating an accounting of the money he loaned and the amounts he had withdrawn.

Over time the employment relationship deteriorated and Goodzeck was terminated without cause. When Goodzeck sought to take back the loans, Bassett realized the manner in which the bonuses were calculated. Bassett believed the bonuses were to be calculated based on profits after taxes.

Goodzeck took the position that \$254,492.49 remained to be paid to him; while Bassett argued it was \$33,710.49. Goodzeck commenced a claim to recover the outstanding amount.

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### WHAT'S NEW AT RUBIN THOMLINSON LLP

Rubin Thomlinson LLP is very pleased to welcome Kevin Robinson, LL.B, as a new Associate in our firm.



The challenge of balancing employer rights with employee rights in the workplace is what drew Kevin to practice employment law. He believes that optimal legal solutions derive from a consideration of both business realities and legal realities, and his counsel to clients responds to both.

Kevin advises employers and employees on all areas of employment law. Kevin has particular knowledge of disability and accommodation in the workplace and federal employment law. He has experience in all phases of litigation.

Kevin's academic background is exemplary. Kevin earned his LL.B from Osgoode Hall Law School in 1997. He then articulated with a national law firm, where he remained after being called to the Bar in Ontario in 1999. In 2004 Kevin joined the legal department of the CBC where he dealt with labour and employment issues.

We work with employer clients to provide optimal legal solutions to their challenging workplace issues. If you would like to know more about our practice, please do not hesitate to contact us at (416) 847-1814 or via e-mail at [contact@rt-law.ca](mailto:contact@rt-law.ca).

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### This Just In...

On Thursday March 29, 2007 the Supreme Court of Canada indicated that it would hear an appeal of the Honda v. Keays decision. This case involved the termination of an employee who suffered from chronic fatigue. The manner in which Honda handled the termination, and in particular Keays' absences from work, resulted in the trial judge awarding Keays 24 months pay in lieu of notice, plus \$500,000 in punitive damages. This was reduced to \$100,000 by the Ontario Court of Appeal a few months ago. This is one of the most important employment law decisions in recent years. Stay tuned...

### Upcoming Events

Look for Janice Rubin at the Strategic Capability Network's "Toxic Workplace Cultures" forum on April 3, 2007 from 7:30 am to 9:30 am at the Toronto Board of Trade, where she will join a panel of experts to discuss toxic workplaces, how to spot them and turn them into harmonious workplaces. To reserve a spot, please register on-line by going to the "Events and Meetings" page on the Strategic Capability Network's website at <http://www.scnetwork.ca>.

Please contact us at 416.847.1814 or by email at [contact@rt-law.ca](mailto:contact@rt-law.ca) for additional information on any of our workshops or other events.

*This alert is prepared as a service for our clients and other persons dealing with employment issues. It is not intended to be a complete statement of the law or an opinion on any subject. Although we endeavour to ensure its accuracy, no one should act upon it without a thorough examination of the law after the facts of a specific situation are considered. No part of this publication may be reproduced without prior written permission of Rubin Thomlinson LLP. This has been sent to you courtesy of Rubin Thomlinson LLP.*

The Court found that there was no "meeting of the minds" between the parties and stated that neither party was to blame. The Court also found that no clear determination was agreed to by the parties on how the bonus was calculated.

Because there was no agreement to rely on, the Court stepped in to determine what a reasonable bonus payment would be for Goodzeck in the circumstances. To do so, it considered the average annual salary for a certified general accountant in the North West Territories and adding a "premium" to that amount to address the fact that Goodzeck had significantly more responsibility than an average accountant. In the end, the employer was ordered to pay Goodzeck \$152,259.

### What this means for employers:

- Clear terms of employment must be agreed to at the time of hire

When terms of employment are not clearly defined at the time of hire, the Court may impose what it thinks is fair and reasonable. As this may not reflect what the employer had either anticipated or budgeted to pay the employee, employers should make sure to clearly outline all of the terms of employment before the employee accepts the position. This should include, but is not limited to:

- Base salary;
  - Eligibility for bonuses and how it is calculated;
  - Eligibility for Benefits;
  - Eligibility for Pension; and
  - Maximum entitlement to Notice Upon Termination
- Written employment agreements reduce confusion
- Had the parties entered into a clear written employment agreement, the likelihood of ambiguity would have been reduced.

Clearly defining terms of employment reduces the risk of litigation and reduces the possibility that the court will be required to impose terms on the parties.