

LABOUR AND EMPLOYMENT

LAW BULLETIN

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A RARE CASE? SALESPERSON'S CLAIM FOR COMMISSIONS BARRED BY RESIGNATION PROVISION IN EMPLOYEE HANDBOOK

Recently, the Ontario Superior Court of Justice dismissed an action by a former employee for commissions earned, on the basis of a resignation provision in the employer's handbook.

In the decision of *Pak v. Reliance Resources Group Canada Inc. (c.o.b. ATS Reliance Technical Group)*, the Plaintiff was employed by the Defendant from March 15, 1999 until he resigned from his employment on February 24, 2000. The Plaintiff was employed as a salesperson in the Defendant's recruitment and job placement business. The Plaintiff was remunerated on the basis of base salary plus commissions. Commissions were earned for successful employee placements made or facilitated by the Plaintiff for the Defendant's clients.

During the last two to three months prior to resigning from his employment, the Plaintiff made seven successful placements, for which the total commissions would have been the sum of \$13,961.79. The commissions became due and owing after certain guarantee periods expired following the Plaintiff's resignation. Had the Plaintiff remained in the employ of the Defendant until the commission payments became due, he would have been entitled to the commissions.

However, the Defendant refused to pay the Plaintiff the commissions on the basis that the following statement appeared in its employee handbook: "It is not the company's policy to pay bonus and commissions accrued or earned after termination." The Plaintiff gave evidence that he was unaware of this policy and that no one had brought it to his attention. However, the Court preferred the employer's evidence, finding that the Plaintiff was aware of the policy, received the employee handbook and signed an employee acknowledgement form, the terms of which made it his responsibility to read and comply with the handbook policies. The Court also upheld the terms of the handbook, notwithstanding that it contained a provision that the handbook was neither a contract of employment nor a legal document.

As a result, the Court found that there was an agreement between the parties that the plaintiff was not to be entitled to the payment of commissions nor damages in lieu of commissions following his termination of employment. The Plaintiff's claim for commissions or damages for breach of contract was dismissed.

The *Pak* decision would appear to represent a departure from the norm in cases of this kind. It remains to be seen whether the case will be appealed or followed in future cases, but it constitutes an encouraging decision for employers.

WHO WE ARE



DARRYL R. HISCOCKS

Direct Line: 416.865.7038

E-mail: darryl.hiscocks@mcmillanbinch.com

Darryl practises in all areas of labour and employment law at both the federal and provincial level. He advises and represents clients with respect to employment terminations, hiring, wrongful dismissal, unjust dismissal, employment standards, employment contracts, employment policies, human rights, grievance arbitrations, collective agreements, workers' compensation, disability policies, occupational health and safety issues, and Canada Labour Code complaints.

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, counsel should be consulted.

For further information on these or other labour and employment matters, please contact one of the lawyers listed below:

David Elenbaas	416.865.7232	david.elenbaas@mcmillanbinch.com
Darryl R. Hiscocks	416.865.7038	darryl.hiscocks@mcmillanbinch.com
Harold P. Rolph	416.865.7841	hal.rolph@mcmillanbinch.com
Stéphane Y. Thiffault	416.865.7178	stephane.thiffault@mcmillanbinch.com

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MCMILLAN BINCH LLP

TELEPHONE: 416.865.7000
FACSIMILE: 416.865.7048
WEB: WWW.MCMILLANBINCH.COM