

A WORD OF CAUTION: ACCEPTANCE OF AN EMAIL OFFER OF EMPLOYMENT MAY CREATE A VALID EMPLOYMENT CONTRACT

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Recently, in *Adams v. Thinkific Labs Inc.*, 2024 BCSC 1129, the BC Supreme Court was called on to determine whether the contents of an email constituted an employment contract.

Background

On August 19, 2021, Adams received Thinkific's email offer of employment (the "**Email Agreement**"). The Email Agreement contained close to 60 pages of detailed information and documentation regarding her compensation, health and wellness benefits, and vacation and leave entitlements. She replied on August 20, 2021 accepting the offer. The following day, Thinkific sent Adams a formal letter agreement, which included termination and non-compete provisions, and other information not included in the initial email offer (the "**Letter Agreement**"). Adams signed and returned the Letter Agreement that day and began working for Thinkific on September 20, 2021. Adams was later terminated on May 23, 2023.

Which agreement governs?

The Court was required to determine whether the terms of the Email Agreement or Letter Agreement governed her notice entitlements on termination.

The Court found that, although Adams had not yet started work for Thinkific when she signed the Letter Agreement, negotiations were complete, and an employment contract had already been established by the offer and acceptance of the Email Agreement. Accordingly, the Court found the Letter Agreement constituted new terms modifying the original Email Agreement.

To enforce a modification to a pre-existing employment contract, there must be a further benefit to both parties. The only consideration given by Thinkific was that Adams could keep her job by agreeing to the Letter Agreement's terms. However, a continuing employment relationship is not enough – there must be additional forbearance or some other incentive to constitute consideration. The Court also found the new terms were onerous, detrimental, and had not been contemplated by the Email Agreement.

Ultimately, the Court held that the Letter Agreement was unenforceable given the lack of additional

consideration. The offer and acceptance of the Email Agreement was a complete contract and Adams' entitlement to notice was to be determined by common law principles as the Email Agreement contained no enforceable termination provisions.

Best practices for employers

During the hiring process, employers may wish to send prospective employees the basic terms of their employment in an email and later follow up with a formal agreement. This case serves as a reminder to employers to ensure that all the terms of the employment contract are included in the initial offer. Failing to do so may result in the accidental creation of an employment contract that does not include important and necessary provisions that protect the employer's interests.

Should you have any questions about your employment agreements and hiring practices, a member of McMillan's Labour and Employment Group would be happy to assist.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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