

TAKE CONTROL OF YOUR OFFERS: THE CAUTIONARY TALE OF BUARON V ACUITYADS INC.

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The recent decision of the Ontario Superior Court in *Buaron v AcuityAds Inc.*^[1] is a cautionary reminder for employers: do not present the fundamental terms of employment to a prospective hire without ensuring that it is clear that the person's employment is conditional upon the execution of a comprehensive employment agreement.

Background

Joseph Buaron ("Buaron") was recruited by the defendant, AcuityAds Inc. ("AcuityAds") from a competitor. The key terms of employment (position, start date, salary, vacation, probationary period and benefits) were discussed in an interview and subsequently confirmed in a letter that did not reference AcuityAds' standard employment agreement. However, the email enclosing the letter did mention scheduling a time "to come in and go through the contracts".

The day after resigning his position with the competitor, Buaron received a fulsome employment agreement from AcuityAds, which included a clause severely limiting the notice period in the event of termination without cause. Having just resigned his current position, Buaron felt compelled to sign the agreement.

Nine months later, Buaron's employment was terminated without cause, with notice paid pursuant to the terms of the employment agreement. Buaron subsequently commenced an action to set aside the employment agreement and claimed damages based on common law reasonable notice.

Decision of the Court

The Court found that an employment contract was formed when Buaron received the letter setting out the key terms of employment. The Court was not persuaded by AcuityAds' argument that reference to "the contracts" in the email enclosing the offer letter was a clear indication that the employment relationship would be governed by a comprehensive agreement. As it was not made clear that Buaron's employment was conditional upon him executing AcuityAds' employment agreement and as no new or additional consideration was provided when Buaron subsequently signed the employment agreement, the Court held that the

agreement was unenforceable and did not limit Buaron's termination entitlements.

As a result, the common law governed the notice period and the Court awarded damages to Buaron based on four months of compensation, in addition to payment of his legal fees.

What This Means for Employers

The result in *Buaron* serves as a valuable reminder to employers. While it is perfectly reasonable to discuss key terms of employment with prospective hires, employers should take care to ensure that an offer isn't made to the employee which is sufficiently detailed to allow a Court to find that an enforceable contract was formed.

It is common in interview settings to discuss the terms of employment – salary, position, duties, prospective start date, etc. If, at the end of that discussion an employer asks the employee if they are prepared to accept the job, and the employee says yes, the employer runs the risk that a Court will find that an enforceable agreement has been formed. The Court may be satisfied that sufficient information about the employment has been provided to allow the employee to make a decision, and there is offer and acceptance.

Employers should ensure that the prospective hire is advised that the offer of employment is conditional upon the execution of a comprehensive employment agreement setting out the terms and conditions that will govern the employment relationship. This conditional aspect of the offer should be confirmed in any subsequent communications to the individual and the only written offer that should be provided is the fulsome offer that the employer wants the employee to sign.

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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1 2015 ONSC 5774 [*Buaron*].

A Cautionary Note

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