Changing that Employment Agreement could be costly...

Court of Appeal orders Liberty Insurance Company of Canada to pay notice to their agents after insisting that they sign a new agreement.

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On January 4, 1999, Liberty Insurance Company of Canada ("LICC") wrote to its agents announcing that their agreement with London Life had been renewed and enclosed a new agreement for its agents to sign. The new agreement provided for a change in commission structure, effective April 7, 1999, placing greater emphasis on new sales rather than renewals. As no agents had returned the signed agreement LICC wrote to the agents on March 30, 1999, reminding them to sign and return the agreements immediately. By April 15, 1999, none of the agents had returned a signed copy of the agreement. LICC then wrote to the agents on April 15, 1999 indicating that they had not received a signed copy of the LICC agreement and notified them that "effective April 7, 1999 your Agreement with Liberty Insurance Company of Canada is terminated".

The Court of Appeal considered the following: 1) whether LICC's actions in requiring their agents to sign the LICC agreement, which the agents claimed reduced their commissions and introduced new minimum production levels, was a fundamental breach of contract amounting to constructive dismissal; 2) if so, whether the agents were entitled to reasonable notice; 3) the amount of such notice; and, 4) whether the agents were in breach of their contract by refusing to acknowledge LICC's managerial authority to change their contract.

The Court found that the agents were "under no obligation to accept the LICC agreement, and their refusal to do so cannot be considered just cause for LICC terminating the [PAGIC] agreement under which they were employed." LICC did have a right to terminate or make changes to the prior agreement providing reasonable notice is given to the agents. The agents' rights to reasonable notice of termination of the prior agreement were unaffected by their refusal to sign the LICC agreement. The notice provided to the agents on January 4, 1999, that their prior agreement would end on April 7, 1999, was unsatisfactory. The agents "refusal to acknowledge LICC's right to make these changes did not justify their dismissal".

With respect to whether employees have a duty to affirmatively acknowledge an employer's right to make unilateral changes to the terms and conditions of their employment, even where such right is provided for by contract, is determined on the policy basis of protecting vulnerable employees. Quoting Justice MacPherson of the Court of Appeal in Ceccol v. Ontario Gymnastic Federation (2001), 55 O.R. (3d) 614: "In an important line of cases in recent years, the Supreme Court of Canada has discussed often, with genuine eloquence, the role work plays in a person's life, the imbalance in many employer-employee relationships and the desirability of interpreting legislation and the common law to provide a measure of protection to vulnerable employees."

Constructive dismissal is recognized as being a difficult predicament for employees who may be forced to work under new terms created by their employers which are less favourable, or make life altering decisions such as quitting their employment and facing the immediate loss of job and income. However, it may be dangerous for the employee to acknowledge the changes and continue to work under such new terms. Such actions by the employee can be construed as condonation of the new terms so that constructive dismissal and a claim for reasonable notice of termination may no longer be able to be claimed by the employee. MB

This is the third article in a series of Employment Law Issues contributed by the Employment Law Group of Minken & Associates Professional Corporation. This article is co-authored by Sara Kauder. Previous two articles were co-authored by Rogelio Mercado. Keep on the watch for future articles on Employment Law.