

negligent misrepresentation

Feature on Fring

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in an Employment Contract

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After 14 years of service with his employer, Norman was having coffee with Albert, a co-worker, and was surprised when Albert told him that the co-worker had been allowed to purchase back some of his years of service in England before commencing employment in Canada.

Norman had worked in his native Australia for twenty years before commencing employment in Canada. When he attended the sign-on interview on his first day with his Canadian employer, Norman entered believing he could not buy back his Australian service and left the meeting with the same understanding. However, this was not correct as his employer had recognized the Australian pension plan for a number of years prior to hiring Norman.

Over the next three years, Norman pressed his employer for relief, but his employer took the position that failing to provide advice was not a negligent misrepresentation. Norman went to court and the court found that a negli-

gent misrepresentation had occurred.

In Issue 22-3 of *LawNow*, W. Douglas Johnston discussed the *Cognos* case that sets out the test for establishing claims for negligent misrepresentations and its application with respect to the hiring interview. Five general requirements must be met before liability will be imposed for negligent misrepresentation. These are the following:

- there must be a duty of care based

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on a special relationship between the parties;

- the representation must be untrue, inaccurate, or misleading;
- the defendant must have acted negligently in making the representation;
- the plaintiff must have reasonably relied on the misrepresentation; and
- the plaintiff must have suffered some loss or damage.

This article will discuss four cases that have considered the law of negligent misrepresentation in employment since the *Cognos* case.

In Norman's case, the courts found that each of these elements of the test had been satisfied and he was awarded damages to put him into the same position he would have been in if he had received proper advice regarding the buy-back of his Australian service on his first day at work in Canada. This case is a decision of the Federal Court of Appeal, *Spinks v. Canada*, 1996.

The second case, *Landry v. Pratt &*