



Ron Wigglesworth

Promises, promises.

The Case of Queen v. Cognos

It seemed like a golden opportunity. You applied for a position as a project manager for a fascinating new project with a company located in Calgary. The job interviewer, after telling you about the funding secured for the project and the company's commitment to the project for the next several years, offered you the position on the spot. You seized the opportunity, accepted the position by signing a written employment contract after skimming through it, and relocated your family by selling your house in Edmonton and buying a new one in Calgary. After two weeks of trudging three blocks from your parking space to the office (after being promised a prime parking space) and settling into your windowless, inside office (after being promised a lush corner office), you are informed that your dream project has been cancelled due to a lack of funding and you are put into a substantially different, and less exciting, project. Shocked and dismayed, what legal recourse do you have?

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Until recently, an employee in such situation where a written contract was signed had a great deal of difficulty seeking legal sanctions against the employer. Any statements made by the employer during the hiring process which turned out to be false were said to have merged into the employment contract. That is, the written contract superceded any verbal representations made before the contract was signed. If the contract did not restate the same representations that were made during the hiring process, the employee could not sue the employer if the representations were false: the representations did not, technically, form part of the contract. To further protect themselves, employers, who draft the contracts, tend to include wording limiting the employer's liability for arbitrary termination or re-assignment. Alternatively, the wording may state that the written contract is the *entire agreement* between the employer and the employee. And the potential employee

often signs the contract without consulting a lawyer. Further, even where the oral representations were included in the written contract, the employee would then be forced to sue the employer for a breach of the employment contract if the employer failed to follow through with the promises made. This could be difficult because contracts would often contain provisions limiting the employer's liability for the breach of contract.

Now, however, in some circumstances, an employer may be liable for misrepresentations made to a prospective employee before the actual employment contract was signed. This may be so even though the contract does not mention those representations if those representations were made *negligently*. The Supreme Court of Canada, in the case of *Queen v. Cognos* (1993), has clarified when an employer will be liable for such negligent, or care-

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