

## The Risk of Delay in Signing Employment Contracts



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The recent Ontario Court of Appeal decision in *Holland v. Hostopia.com* confirms with authority that employment contracts signed after commencement of employment will not be binding against the employee in significant respects.

Holland was hired by Hostopia as National Account Manager pursuant to a written offer of employment dated May 13, 2003. The offer letter said nothing about notice of termination, but did expressly require “the subsequent signing of an employment agreement”.

Holland accepted the offer and commenced employment effective May 9, 2003. Approximately nine months later, he was presented with the (6 page) employment contract referred to in the original offer. Significantly, the contract permitted Hostopia to terminate Holland’s employment on only the minimum notice required by the *Employment Standards Act* (“ESA”).

Holland signed the contract, acknowledging that he understood

its terms, that he was not under duress and that he had reasonable opportunity to obtain independent legal advice.

Some seven years later, Hostopia terminated Holland’s employment without cause, providing him with only the minimum *ESA* termination payments, consistent with the contract.

Holland sued for wrongful dismissal, arguing that there was no consideration for the contract, that the contract was therefore not binding on him and that he was entitled to reasonable notice or pay instead at common law.

The trial Judge disagreed with Holland, finding that the offer letter and contract constituted one document in respect of which Holland received adequate consideration when he got the job.

On appeal, the Court reversed the trial decision, finding that the offer letter, once accepted, constituted a complete contract of employment. The contract signed nine months

later contained a new termination provision (in the Court's view, a "material" new term) limiting Holland's rights. There was no "new" consideration given to Holland in respect of this new term, rendering it invalid. Accordingly, the Court awarded Holland 8 months' pay instead of notice.

Employers who are hiring must have their contracts of employment fully ready, in the employee's hands and signed prior to the employee's start date. Any delay beyond the date of commencement of employment creates a significant risk that the contract will not be enforceable and that the employer will be exposed to unwanted termination (and possibly litigation) costs.