

# JRSB205 (summer 2010)

## Topic 4, Lesson 2, Activity 1: Operating a business... legally speaking – Drafting Contracts

### Group E

#### 1. Draft a one-page contract that addresses both your business's needs and the legal requirements for an enforceable contract.

The following is a brief contract of service where we could see the set of the element of a contract (some of them implied).

### Contract of Service

This Agreement, made in Edmonton, on June 13, 2010.

**Between**      **Le Petit Group Inc.**, as represented by **German Four,**  
**Director, Human Resources**  
(hereinafter called the "Employer")

**And**            **Ms. Austral Zero**  
(hereinafter called the "Employee")

**In consideration** of the mutual promises herein contained, the Parties covenant and agree as follows:

#### 1. The Employee agrees

- (a) to provide services as chef specialized in fish in the Le Petit Coil de la Loi Familiale under the direction of the General Manager;
- (b) to work between 10 a.m. to 11 p.m. during the weekends and holiday days as responsible of the kitchen, fish area;
- (c) to treat as confidential and to keep private and not to make public or to divulge, except in the course of performing duties or providing services under this Agreement, during or after the term of this Agreement, any information or materials of a confidential character relating to the affairs of Le Petit Group Inc., unless consent in writing of the Employer is first obtained; and
- (d) to be bound by the principles and purposes of both the Code of Conduct at Le Petit Restaurant.

#### 2. The Employer agrees

- (a) to pay a salary to the Employee of \$ 150 per hour, before any deductions, payable the first day of each month;
  - (b) to reimburse the Employee for all expenses incurred that would be reimbursed if incurred by a civil servant;
  - (c) to indemnify the Employee and extend to the Employee the same protection against liability from suits or claims brought against the Employee in respect of work performed.
- 3.** The Employee is not entitled to enroll in any health nor retirement plan.
- 4.** The term of this Agreement is 36 months, from July 1 2010, to June 30 2013, unless terminated earlier under this Agreement or extended by mutual agreement in writing.
- 5.(a)** Despite any other provision herein, this Agreement may be terminated, without notice or compensation in lieu of notice, for just cause, which the parties agree includes failure by the employee to carry out the terms of this Agreement. In the event of such termination, the Employee must be paid the sum or sums that have accrued under subsection 2(a) up to the date of termination, and such sum or sums must be received by the Employee in full satisfaction and discharge of all claims and demands unnecessary against the Employer in respect of this Agreement.
- (b) Despite subsection (a), this Agreement may be terminated at any time, for any reason, by either of the Parties giving to the other Party 30 days' written notice to that effect, and upon such termination the Employee must be paid the sum or sums that have accrued under subsection 2(a) up to the date of termination, and such sum or sums must be received by the Employee in full satisfaction and discharge of all claims and demands against the Employer in respect of this Agreement.
- 6.(a)** The Parties agree that any recourse or remedy arising with this Agreement arises from contract, and that neither Party has a claim or remedy, in damages or otherwise, in tort arising from performance or non-performance of this Agreement.
- (b) if a dispute arises under this contract in respect of a matter in which the parts have not authority under the contract to make a finding, a mediation process will be conducted; the parties shall appoint a project mediator from the Alberta Arbitration & Mediation Society.
- 7.** All new ideas or materials produced from the performance of this Agreement and all rights therein belong to the Employer.
- 8.** The Employer reserves the right to publish any research, reports, material, audio-visual materials or information produced by the Employee in the performance of this Agreement.
- 9.** This Agreement is not assignable.
- 10.** Any discretionary authority or right under this Agreement is not subject to the expectations, reasonable or otherwise, of the Parties to the contract and any action taken under a discretionary provision is deemed to be an exercise in good faith.
- 11.** No term or provision of this Agreement is deemed waived and no breach excused unless the waiver or consent to the breach is in writing, signed by the Party making the waiver or giving the consent. Any waiver of a term or provision or consent to a breach, whether express or implied, does not constitute a waiver of a different term or provision or consent to a different or subsequent breach or continuation of the same breach unless expressly stated.

12. If any term or provision of this Agreement is found to be unenforceable or illegal, the rest of the Agreement remains in full force and effect except that the offending term or provision is deemed to be removed from the Agreement.

13. Any notice required to be given under this Agreement is valid if given in writing by pre- paid registered letter addressed as follows:

to the Employer:

German Four, Director Human Resource  
Le Petit Coin de la Loi Familiale  
9505 109 St, Edmonton  
(T6H2B3), Edmonton, Alberta

to the Employee:

Austral Zero  
10905 95 St, Edmonton  
(T6H3B2), Edmonton, Alberta

or to another address that is communicated in writing to the Parties, and is deemed to have been given 2 business days after the day the letter is posted. Nothing in this Agreement precludes the delivery of notices by means other than mailing.

14. The Employee hereby certifies that she has reviewed and fully understands the terms of this Agreement, and agrees that this Agreement constitutes the whole agreement and replaces any previous agreements between the Parties, that no representation or statement not expressly contained survives this Agreement or is binding upon either Party, and that this Agreement can only be modified by written instrument.

15. This Agreement must be construed in accordance with the laws of the Province of Alberta.

In Witness Whereof the Parties have executed this Agreement on the day and year first above written:

**Signed, Sealed and Delivered**

in the presence of

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Employee

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Employer

## 2. What are the advantages and disadvantages of using generic contracts and other legal forms?

There are some advantages and disadvantages using generic contracts. Each situation will have different weights in consideration with these advantages and disadvantages, and finally will define what it could be better to use.

Some of the advantages are:

- Cost: the generic contract is cheaper than a non generic contract. The non generic contract involves the work or revision from any professional, which means a significant increase in the cost. Generic contract spreads its cost in several customers, which results in a cheaper service.
- Subjects: the generic contract is developed over the time; this represents a continue feedback for improvements, inclusions, etc. In other side, in a non-generic contract could be forgotten some issue with an important impact.
- Generic legal things: for common contracts (e.g.: employment, product guarantee) there is not too much variants in generic cases; so, the generic contract appears to be a good solution.

Some disadvantages are:

- Generic: the generic contract could not be easily adapted to the specific situation. This represents a potential mistake or not a correct understanding of any term of the contract. The consequences could be very serious.
- Balance: some generic contracts are developed by different stakeholders (e.g.: Canadian Construction Documents Committee redacting CCDC 2). The representation and participation of the different stakeholders at the committees has a strong influence in the terms that the contract could have some benefit.

### **3. What can be learned from the Table of Contents provided for these contracts?**

The ToC provides a guideline of those elements that we need to consider in the contracts. The ToC is a useful guide to organize the subjects that a contract should include. Not all items in the ToC apply for all contract requirements, but it represents a complete set of considerations for a generic contract, and a baseline where to set the start for a non-generic contract.

### **4. Have a look at the Agreement one must enter into if ordering JuriFax forms.**

Reference [3] presents the agreement.

### **5. Why does it contain a DISCLAIMER?**

According to [2], a disclaimer is a defensive measure, used generally with the purpose of protection from unwanted claims or liability. A disclaimer clause in a contract might set forth certain promises and deny all other promises or responsibilities.

It is understood that a generic contract could not represent some particular situation. In addition the generic contract could have both errors and omissions and JuriFax is trying to take out any liability.

## **6. Are there clauses you'd recommend be added or deleted?**

There are some clauses in the Contract for Service generic contract ToC [3] that, according to the scope of the service for Le Petit, that could be avoided. Some of them are:

- Related with Intellectual Property: instead that it is a subject of concern for Le Petit business, the clauses in the generic contract are very broad and Le Petit does not need all of them (e.g.: technology development)
- Related with specific provisions: idem, for example "Electronic communications"
- Related with Exclusivity of the Service: Le Petit does not need this clause
- Subcontracting: idem
- Verification, testing and approval process: idem
- Change of Tax Rates or New Taxes: idem
- Collection Costs: idem

## **7. Does this exercise help you appreciate the value of a lawyer's services?**

We think this exercise helps to better understand and appreciate the value of the sophisticated client. As per direct relationship, it helps to appreciate the value of many things:

- Lawyer's services;
- Standards and not standards processes related with law, specifically contracts.

## **Works Consulted**

[1] Service Alberta. Retrieved June 12, 2010, from <http://www.servicealberta.gov.ab.ca/729.cfm>

[2] The Free Dictionary. Retrieved June 13, 2010, from <http://legal-dictionary.thefreedictionary.com>

[3] JuriFax. Retrieved June 13, 2010, from <http://jurifaxstore.stores.yahoo.net/1476e.html>

[4] Yates, R., Bereznicki-Korol, T. and Clarke, T. (2008). *Business Law in Canada (8<sup>th</sup> edition.)* Ontario, Canada: Person Education Canada.