

<b>Article:</b>	Hudson case illustrates growing litigation risk over candidate recommendations
<b>Date:</b>	15 October 2007
<b>Source:</b>	ShortList - <a href="http://www.shortlist.net.au">www.shortlist.net.au</a>

A dispute between leading law firm McMahons and Hudson has highlighted a growing area of litigation between recruitment companies and clients over candidate recommendations.

McMahons managing partner Bryan McMahon confirmed that his firm recently settled a Federal Magistrates Court action against Hudson over the placement of a senior lawyer.

The settlement details were confidential, but McMahon's statement of claim alleged that Hudson had breached the Trade Practices Act when it recommended the candidate in 2005.

The statement said that once hired the lawyer demonstrated "poor litigation skills and substandard conduct", and ultimately resigned after a range of problems.

McMahons sued Hudson for his salary package (\$119,422) plus the \$33,000 recruitment fee, as well as extra staffing costs and damage to its reputation.

Hudson, which had a no-liability clause in its contract with McMahons, argued that it was up to the employer to be fully satisfied with candidates before they were hired.

Hudson spokesperson Brett McGuire said the company couldn't comment due to the confidentiality clause in the settlement.

Bryan McMahon said he couldn't comment on details of the case, but said he accepted that the representations made to the firm had been made by the candidate, not Hudson.

### **Trade Practices liability can't be waived**

The McMahons case is another example of the growing use of the Trade Practices Act and common law by both candidates and clients against recruitment companies (see related articles).

Without commenting specifically on that case, University of New South Wales associate law professor Joellen Riley said a no-liability clause wasn't sufficient to contract out of obligations under the Trade Practices Act.

She said [s52](#) of the Act, which prohibits deceptive or misleading conduct by corporations engaging in commercial activity, was a statutory obligation which couldn't be waived by consent of the parties.

"The only way a waiver would work is if there was some kind of clear disclaimer by the recruiter saying, 'Look, we've done the best we can to check references but ultimately you have to rely on your inquiries and make your own decision'."

Such a disclaimer would need to clearly alert all parties to the fact that the representations being made were significantly qualified, Riley added.

Even then, it was ultimately a decision for the courts as to whether the recruiter's conduct was misleading or deceptive, and whether the client had suffered a loss because of it.