

Member's Quarterly

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Feature

Minding Your Manners: Ontario Court Weighs in on Employer Termination Conduct

Employer's obligation of good faith and fair dealing with termination



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The Ontario Court of Appeal has recently provided employers with an important lesson in the legal consequences of breaching their obligation of good faith in the manner of an employee's dismissal. As was the case in *Ruston v Keddco MFG. (2011) Ltd.*, 2019 ONCA 125, conduct that falls short of good faith and fair dealing can trigger significant moral and punitive damages, in addition to high cost awards.

The Facts

The employee in *Ruston v Keddco* was 54 years of age and had been employed with the defendant, Keddco MFG (2011) Ltd., for 11 years. At the time his employment was terminated, he was the company president. Keddco took the position that it was terminating the employee for cause; however, it provided the employee no explanation.

The employee brought an action for wrongful dismissal, to which Keddco responded with a \$1.7 million counterclaim for unjust enrichment, breach of fiduciary duty and fraud, as well as an additional \$50,000 in punitive damages. It was only upon receiving the counterclaim did the employee learn the particulars of Keddco's allegations for cause.



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Outcome at Trial

Keddco produced no evidence to prove any of the allegations it made against the employee let alone to prove that it had cause to terminate his employment. The trial judge therefore dismissed the counterclaim in its entirety and proceeded to award the employee a 19-month notice period, inclusive of bonus and benefits.

The trial judge also found that Keddco had breached its obligation of good faith and fair dealing both in its pre and post termination conduct. Accordingly, the trial judge awarded the employee punitive damages of \$100,000 and moral damages of \$25,000, in part, because Keddco:

- Attempted to intimidate the employee during the termination meeting by threatening to counterclaim against him if he pursued a wrongful dismissal claim;
- Refused to advise the employee of the reasons for which it was alleging cause during the termination meeting; and
- Filed a baseless \$1.7 million counter-claim to strategically intimidate the employee. Keddco failed to lead any evidence pertaining to the allegations, called no witnesses and proceeded to drop its claim to \$1 during the trial.

In a subsequent decision, the trial judge also proceeded to award the employee with substantial indemnity costs against Keddco in the amount of \$546,684.

The Ontario Court of Appeal upheld the trial judge's decision, including the costs award.

Employers Take Note

Ruston v Keddco sends a clear signal that employers who engage in poor behaviour before and after the termination of employee risk costly reprimand by the courts should a legal action ensue.

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Employers should be mindful of their obligation of good faith and fair dealing when terminating an employee. They must be mindful of the fact that a court may consider both pre and post termination conduct in the analysis for punitive and/or aggravated damages. This includes conduct that involves:

- Intimidation tactics, including the threat of legal expense or a counterclaim, used for the sole purpose of dissuading an employee to seek legal advice or pursue legal action;
- Baseless allegations of termination for cause; and
- Refusing to provide an employee with the reasons for alleging cause.

The courts have found that an employee is particularly vulnerable leading up to and following the termination of employment. As such, employers ought to be vigilant of their obligations of good faith and fair dealing during this time.

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