

Member's Quarterly

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Feature

Unjust Enrichment in Wrongful Dismissal Cases

Challenge for employees to meet the unjust enrichment test

Introduction

Employees facing wrongful dismissal claims have creatively attempted to recover damages from employers through various avenues. In *Chaudry v. Bank of Montreal*, 2023 ONSC 4829 ("*Chaudry*"), the Ontario Superior Court of Justice held that while wrongful dismissal claims can result in numerous forms of compensation, including lost wages and benefits, they must be limited—particularly when it comes to claims related to unjust enrichment.

Background

The Plaintiff, Mr. Chaudry, was employed as a senior executive when he was terminated without cause and without advance notice after 17 years of employment with the Defendant, the Bank of Montreal. At the time of termination, Mr. Chaudry's salary was approximately \$275,000 as well as employee benefits and participation in several incentive programs. These programs provided more than \$4 million in total compensation to the Plaintiff in each of the three years prior to termination.

When Mr. Chaudry was terminated in May 2019, he sued his former employer for wrongful dismissal. He also claimed that the Bank had been unjustly enriched because Mr. Chaudry worked up to the termination date without being paid his incentive payment. In his claim, he sought a 36-month reasonable notice period and claimed damages for breach of contract in the amounts of \$2.5 million for unpaid compensation; \$15 million for compensation during the reasonable notice period; \$250,000 in general damages; damages to replace employee benefits; reimbursement of mitigation expenses; and pre- and post-judgment interest and costs.

Mr. Chaudry later sought to amend his claim to include an additional \$10 million for unjust enrichment, seeking the return on equity earned by the Bank. In the alternative, the Plaintiff sought disgorgement in that amount—an equitable remedy that is commonly awarded to prevent unjust enrichment and make illegal conduct profitable.

The Decision

The motion judge considered the law regarding the test for leave to amend, unjust enrichment and disgorgement, and concluded that the pleading amendment should only be refused as legally untenable if there was a complete impossibility of success. The motion judge also concluded that the pleading did not disclose an action that supported the claim of unjust enrichment or disgorgement.

These issues were also considered on appeal. In considering these issues, Justice Matheson confirmed the proper test for amending pleadings was administered by the motions judge.

On the issue of tenability, Matheson J. determined that the motions judge properly relied on *Kerr v. Baranow*, 2011 SCC 20, to find that such a claim requires an enrichment or benefit to the defendant, a corresponding deprivation of the plaintiff and the absence of a juristic reason for such enrichment. The motion judge was found to have been correct in holding that there was no corresponding deprivation of Mr. Chaudry in this instance. Mr. Chaudry put forth submissions that amounted to the argument that in every



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wrongful dismissal claim, a plaintiff can claim unjust enrichment and explore the defendant's rate of return on investments; however, Justice Matheson found this cannot be the case because the plaintiff has not suffered a loss based on the Bank's return on investment.

The Court recognized that the Supreme Court of Canada ("SCC") had already underscored the limits on damages for wrongful dismissal in *Honda Canada Inc. v. Keays*, 2008 SCC 39. According to the SCC, recoverable damages include the loss suffered by a plaintiff for the failure to give proper notice and, when appropriate, compensation for the wrongs associated with the manner of dismissal. As such, Justice Matheson held that the motions judge was correct in limiting the claim to such damages. The alternative remedy of disgorgement was not considered on appeal given Justice Matheson's findings on unjust enrichment.

Takeaways for Employers

The decision in *Chaudry* reiterates that the threshold remains very high for an employee to succeed on a claim of unjust enrichment and disgorgement. Although not impossible, it continues to be a challenge for employees to meet the unjust enrichment test. It is not sufficient to simply demonstrate that an employer has experienced a gain or benefit, and employees will generally struggle to show the court that they have endured a loss that corresponds to an employer's gain.

While *Chaudry* serves as a reminder that the remedies of wrongful dismissal claims can be limited, it also brings attention to the importance of meeting legal standards for pleading a claim. In particular, it is critical that a claim is thoroughly considered from the outset and sets out a tenable action that can be supported by facts. Above all, the decision bolsters the notion that employee dismissals, particularly at the executive level, can quickly become legally complex and that employers should always consider HR policies and/or legal advice to navigate these complexities effectively.

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