

## Ontario Court of Appeal Upholds Extraordinary Award in Wrongful Dismissal Case

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**March 13, 2019**

In *Ruston v Keddco Mfg. (2011) Ltd.*, 2019 ONCA 125, the Ontario Court of Appeal upheld an extraordinary award – totaling more than \$1.1 million – against an employer that breached its duty of good faith and fair dealing in the manner in which it dismissed one of its former employees.

### The Facts

When Keddco was acquired by Canerector in 2011, Mr. Ruston was promoted to President. In 2014, Mr. Ruston began reporting to Canerector's CEO. Within a year, Canerector decided to terminate Mr. Ruston's employment for cause, alleging that he had committed fraud. No details of the fraudulent conduct were provided to Mr. Ruston at the time of termination.

When Mr. Ruston asserted that he did not know what conduct the CEO was referring to and that he would be hiring a lawyer, the CEO told him that, if he did, a counterclaim would be filed against him and that the litigation would be "very expensive." True to form, when Mr. Ruston filed a wrongful dismissal claim, Keddco filed a counterclaim, seeking damages of \$1.7 million for fraud as well as \$50,000 in punitive damages.

### The Outcome at Trial

At trial, the Court found that Keddco failed to prove cause or any of its other allegations against Mr. Ruston. The trial judge also found that Keddco's counterclaim had been a "tactic to intimidate" Mr. Ruston. As such, the trial judge found that Keddco breached its obligation of good faith and fair dealing in the manner of Mr. Ruston's dismissal, awarding him:

- 19 months' pay in lieu of notice, including bonuses and benefits, totalling \$479,000;
- punitive damages in the amount of \$100,000;
- aggravated damages in the amount of \$25,000; and
- costs on a substantial indemnity basis in the amount of \$546,684.73.

Keddco appealed the various amounts as excessive.

### The Court of Appeal's Findings

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The Court of Appeal dismissed Kedddco's appeal in its entirety.

On the issue of reasonable notice, the Court of Appeal deferred to the trial judge's "careful and cogent reasons" for determining that 19 months' pay in lieu of notice was appropriate. Although Mr. Ruston had only 11 years of service, the trial judge found that other factors justified a long notice period. Namely, Mr. Ruston was 54 years old. He had a grade 12 education, held a senior position with 43 people reporting to him, and was earning \$278,476.08 per year, plus bonuses. There were limited opportunities for re-employment nearby and Mr. Ruston had eldercare responsibilities that prevented him from seeking employment elsewhere. The trial judge had also noted the impact of Kedddco's decision not to assist Mr. Ruston in his re-employment efforts by providing him with a reference letter or even a letter confirming his position.

With respect to the aggravated and punitive damages award, the Court of Appeal found that the evidentiary record provided ample support for the trial judge's conclusion that Kedddco had breached its duty of good faith and fair dealing in the manner of dismissal by, in particular, threatening Mr. Ruston in an effort to deter him from making a claim and then commencing a counterclaim that was intended to (and did) cause him considerable stress.

The Court of Appeal also rejected Kedddco's argument that the same underlying conduct could not give rise to both aggravated and punitive damages. It held:

It does not follow from the fact that this is the same conduct which the trial judge referred to in making the aggravated damages award that an award of punitive damages amounted to either double recovery or double punishment. That is because aggravated damages aim to compensate a plaintiff for heightened damages caused by the breach of the employer's duty of good faith and fair dealing in the manner of dismissal, while punitive damages seek to punish and denunciate inappropriate or unfair conduct.

Finally, the Court of Appeal declined to interfere with the \$546,684.73 costs award. Despite recognizing that the award was "unusually high," the Court of Appeal upheld the trial judge's determination as fair and reasonable in the circumstances. Since Kedddco had threatened Mr. Ruston with an expensive counterclaim and then delivered on its promise by engaging in costly and unnecessarily complex litigation, Kedddco quite literally had to bear the costs of its decisions. The Court of Appeal also ordered Kedddco to pay Mr. Ruston a further \$35,000 for the costs of the appeal.

## **Takeaways for Employers**

The extraordinary award in this case, upheld on appeal, displays the significant liability that can result from the termination of a single employee. Three key takeaways for prudent employers are:

- There is no common law "rule of thumb" that a dismissed employee is entitled to one month's

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notice for every year worked. An employee's length of service is only one of many factors a court will take into consideration when determining the appropriate reasonable notice period.

- Dismissal for cause is a serious matter. If asserted in bad faith or in an unfair manner, the employer may be liable for aggravated damages and punitive damages. These two heads of damages serve distinct purposes and may therefore be based on the same underlying conduct without amounting to double punishment.
- Meritless counterclaims are not a tactic to better position the employer in wrongful dismissal litigation. Employers who proceed with a counterclaim with a lack of evidence to support their allegations and thus unnecessarily complicate the litigation may see significant adverse costs awards against them.

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