

Balancing employee, employer rights

Employees aren't the only ones who can sue when the relationship turns sour, and the number of cases of employers taking action seems to be rising

By Lauren Sukerman

Since the beginning of the industrial revolution, labour laws have emerged and developed into a specific and substantial legal discipline.

As commonly recognized, the impetus for the movement was an attempt to manage and improve working conditions for the labourer. Accordingly, labour laws aim to protect workers and are regularly used to enforce this goal.

In the last 50 years, employment law has developed to assist individuals in the work force where no union exists. This legal branch has been successful in setting standards and minimum requirements for employers to follow.

Currently in Canada, individual employment law regulates the employment relationship for about 65 to 70 per cent of employees.

Following on the direction set by the labour movement, employment law has successfully established a device to protect the rights of non-unionized employees. Concepts such as termination and severance pay, reasonable notice and wrongful dismissal are now common knowledge among employees and are regularly enforced against employers through either statutory or court processes.

However, as this area of the law continues to proliferate, an interesting new trend is starting to surface: Courts are beginning to recognize the need to balance an employee's rights with the

employer's need for business efficiency. Plainly spoken, there is no point in suing over an employee's rights if it will lead to a significant decrease in business and the ultimate loss of a job. So, we are back to the proverbial scales of justice.

It would seem that, in order to recognize these competing purposes of the workplace, employment law is starting to swing both directions.

In the last decade there has been an increase in the number of cases where employers have successfully sued their employees for having breached the duties of employment. This may suggest a new means of action against employees who perform poorly, incompetently or otherwise in breach of their duties.

As a result, employers who are dissatisfied with their workers may, in addition to terminating their employment, sue for damages.

In *Sure-Grip Fasteners Ltd. v. Allgrade Bolt & Chain*, a 1993 decision of the Ontario Court of Justice, three employees dissatisfied with their working environment who simultaneously resigned to set up a business of their own, were successfully sued for \$75,000 in damages.

The court held that, by leaving together without prior notice, the employees breached their obligation to give reasonable notice of their resignation to their employer. Furthermore, having been found to be fiduciaries owing an additional obligation of good faith, the employees were prohibited from competing with their former

employer for a period of one year. In this case, the company was very small and the employer largely relied upon the three employees, who comprised the entire sales staff in Ontario.

However, in a more recent decision of the British Columbia Supreme Court, *Lower Mainland Better Hearing Centres Inc. v. Zhang*, a similar ruling was made where an employee resigned her services with no good reason, in breach of her employment contract.

In this case, the court said the employer was entitled to direct the employee's efforts and was entitled to criticize her efforts if she did not meet the employer's reasonable expectations. Damages were awarded to the employer in the amount of \$10,000.

In another similar case, *Bradley v. Carleton Electronic Ltd.*, which was subsequently upheld by the Ontario Court of Appeal, a key employee who quit without providing proper notice was liable for the costs incurred by his employer as a result of his leaving the company.

In terms of cases regarding an employee's competence, a B.C. court awarded damages in the amount of \$30,000 against an employee who was found to have negligently performed his duties and breached his obligations of confidentiality after resigning in *Billows v. Canarc Forest Products Ltd.*

It was determined by the court that the employee behaved in a willfully disobedient and insubordinate manner that violated the bond of trust essential to the employment relationship.

Similarly, in *International Commercial Bank of Cathay (Canada) v. Chen*, an extraordinary decision of the British Columbia Supreme Court, the former manager of a Bank was held liable for almost \$10 million in losses incurred by the bank.

This award was granted despite the manager's assertion that his actions were motivated by customer satisfaction and the best interest of the bank.

The court found the manager to have mishandled monies, acted contrary to

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his authority, contrary to bank policies and in flagrant breach of his fiduciary duty. As a result of this conduct, the bank was also awarded punitive and special damages.

From the examples above, it would appear courts are slowly adopting a broader position on the purpose of employment law.

Under this new perspective, employment obligations are not merely used to protect employees, but are to be equally enforced against the employer and the employee in order to establish the most efficient and fair work place.

In light of this goal, employers may be just as likely to sue employees for sub-standard performance, as would employees who are seeking to enforce the same as against their employer. ■

For more information see:

- *Sure-Grip Fasteners Ltd. v. Allgrade Bolt & Chain*, 1993 CarswellOnt 931, 45 C.C.E.L. 276 (Ont. Gen. Div.)
- *Lower Mainland Better Hearing Centres Inc. v. Zhang*, 1996 CarswellBC 96, 18 C.C.E.L. (2d) 271 (B.C. S.C.)
- *Bradley v. Carleton Electronic Ltd.* [1998] O.J. No. 3050.
- *Billows v. Canarc Forest Products Ltd.* [2003] B.C.J. No. 2064.

- *International Commercial Bank of Cathay (Canada) v. Chen*, 2003 CarswellBC 2640, 2003 BCSC 1616, 29 C.C.E.L. (3d) 96 (B.C. S.C.)



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