

Ontario Court of Appeal upholds and expands lengthy notice award to employee “induced” to leave secure job

If an employer terminates an employee after having induced them to leave their previous employment, the employee may be entitled to a longer period of notice. In the leading decision, *Wallace v. United Grain Growers Ltd.* (see [“Fairly, reasonably and decently”: Employers obliged to deal in good faith with dismissed employees, Supreme Court rules](#) on our Publications page), the Supreme Court of Canada recognized that it is necessary to protect a dismissed employee’s reliance and expectation interests and that many courts have sought to compensate those interests “by increasing the period of reasonable notice where the employer has induced the employee to “quit a secure, well paying job ... on the strength of promises of career advancement and greater responsibility, security and compensation with the new organization””. However, the Court also cautioned that not all inducements to join a new employer will lengthen the notice period and that courts must examine the facts of each case.

This was one of the issues recently considered by the Ontario Court of Appeal in *Alcatel Canada Inc. v. Egan* (January 10, 2006). The case concerned an employee who had been terminated from her position 20 months after leaving Bell Canada to work for Alcatel. Egan had been with Bell for 20 years. When Alcatel terminated Egan, it paid her only 12 weeks of notice and severance under the Employment Standards Act, 2000.

Egan sued for wrongful dismissal and was awarded notice damages of nine months. An important aspect of the trial judge’s decision was the role played by two of Egan’s former colleagues at Bell who had gone over to Alcatel before her. They had encouraged her to leave her position with Bell and, unknown to her, had shared an \$8,000 bonus paid to them by Alcatel for having recruited her.

The trial judge held that, although Egan had not been “enticed away, in the pejorative sense”, she had been “encouraged” to leave Bell and join Alcatel. On appeal, Alcatel argued that, because the judge had failed to draw the necessary distinction between encouragement and inducement, the decision would result in a finding that virtually any employee newly hired had been induced.

COURT OF APPEAL: EMPLOYEE INDUCED TO LEAVE

The Court of Appeal upheld the trial judge’s ruling, noting that, while a finding of inducement requires caution, the role played by Egan’s former colleagues was significant:

“Caution must be exercised to avoid a conclusion of inducement in virtually any new hire and while this case may be close to the line, it reaches a level beyond that inherent in every hiring process because the persuasion came from two former colleagues of Ms. Egan at Bell Canada who were long-time friends and who, unknown to Ms. Egan, knew that if they succeeded in getting her to leave Bell Canada, they would receive a substantial bonus. This is far different than a prospective employee being recruited by a head-hunter who is not a former colleague and long-time friend, and who is

known to the employee to be getting paid for his or her efforts.” [Emphasis in original]

The Court went on to note that, as had been emphasized in *Wallace*, an employee's reliance interest is at stake when they have been induced to leave a secure, well-paying job on the strength of promises of career advancement and greater responsibility, security and compensation with the new organization. This was such a case: Egan had been given a substantial increase in salary, a signing bonus and stock options. She had left a secure position with Bell to become “Director of Global Marketing Programs, Broadband Networking Division”. She had been told that Alcatel was a large company that was entering into new global markets, that there were “tremendous opportunities” with the company, and that it offered security to its employees.

Accordingly, while the Court expressed the view that the notice period was “at the high end of the range”, it held that the trial judge had not erred in setting the period at nine months.

DAMAGES FOR LOST DISABILITY BENEFITS

Egan had cross-appealed the trial judge's refusal to grant her damages for lost disability benefits. This issue arose because, three months after her dismissal, Egan had succumbed to a major depressive disorder and had remained in that condition for a year. The trial judge had acknowledged that, if Egan had received working notice of nine months, she would have been eligible for short and long term disability benefits (STD and LTD) for the entire year that she was disabled, but denied her those benefits because she had been fully compensated by the award of full salary for the nine-month period.

The Court of Appeal agreed that Egan was not entitled to receive benefits in addition to the nine months of notice. Because the disability benefits were intended to substitute for salary, awarding both salary and benefits would amount to double recovery.

However, the Court went on to hold that the trial judge had erred by awarding Egan only salary and not benefits. It therefore substituted the following for the trial judge's award: salary for the first three months after Egan's termination (before she became disabled), STD benefits for the next four months (the maximum period of time for STD), and LTD benefits for the next eight months (the remainder of the period during which Egan was disabled). The award of 12 months of disability benefits was then grossed up to account for the fact that, while damages for wrongful dismissal are taxable, disability benefits are not. The Court's revisions resulted in an increase in the damages awarded from \$83,967 to \$146,825. As well, the Court upheld the trial judge's award to Egan of \$116,848 in costs, and fixed further costs payable to Egan at \$25,000.

In Our View

This case highlights both the discretion that courts have to award damages at the high end of the spectrum of common law reasonable notice and the Court of Appeal's reluctance to interfere with a trial judge's assessment of damages and costs in a wrongful dismissal case. Given the court's interpretation of the concept of “inducement”, this decision also serves as a caution to employers who actively or aggressively recruit prospects. The cost of terminating such employees can be high in the absence of an employment agreement that limits their right to common law reasonable notice. When one factors in the cost award, the employer in this case incurred a heavy expense for its decision to terminate the employee.

For further information, please contact [Jock Climie](#) at (613) 940-2742.

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