

# Employment Law

---

This is a summary of employment law matters of interest, from a litigator's point of view.

## Employer Held Liable for \$125,000 in additional damages as a result of Counterclaim

The Ontario Court of Appeal has upheld the award of the trial judge finding an employer liable to pay \$100,000 in punitive damages and a further \$25,000 in aggravated damages, in addition to 19 months' damages for wrongful dismissal.

The employer alleged cause for the employee's termination and in response to the employee's claim for wrongful dismissal, the employer launched a counterclaim for \$1.7 million in alleged damages for unjust enrichment, breach of fiduciary duty and fraud. At trial, the employer reduced the damage claim to \$1, but was unsuccessful in proving cause for termination, or any of the components of its counterclaim.

The trial judge held that the counterclaim had been an intimidation tactic and that these allegations constituted a breach of the duty of good faith and fair dealing in the manner of the employee's dismissal. She awarded 19 months' damages for wrongful dismissal as well as aggravated and punitive damages.

The Court of Appeal refused to interfere with the findings or the damages awarded. The Court of Appeal held:

"[The Trial Judge] noted correctly that employers have an obligation of good faith and fair dealing in the manner of dismissal and also that an employers' pre and post termination conduct may be relevant to the moral damage analysis if such conduct is a component of the manner of dismissal...

The evidentiary record provides ample support for the trial judge’s finding that the manner of dismissal warranted an award of aggravated damages. She found that threatening [the employee] not to make a claim and in instituting the counter-claim was calculated to, and did, cause [the employee] stress. She accepted [the employee’s] evidence that the manner of dismissal was devastating and had caused him stress. In short, we see no error of law or overriding principle or palpable or overriding error of fact that would justify interfering with the trial judge’s award of \$25,000 for aggravated damages.”

The Court of Appeal went on to find that the trial judge carefully reviewed all of the appropriate factors in considering the award of punitive damages, including the principle of avoiding double compensation.

“In reaching her conclusion, the trial judge referred to the threat by the [employer] during the termination meeting that if [the employee] sued, the [employer] would counter-claim – a threat which it carried out with its counter-claim alleging fraud. The trial judge also referred to the fact that the [employer] had, on the seventh day of trial, reduced its damages from \$1,700,000 to \$1. The trial judge concluded that ‘it did not appear as though the [employer] had any intention of proving damages but rather was using the claim of \$1,700,000 strategically to intimidate [the employee].’..These facts support her finding of misconduct justifying a punitive damage award.”

The Court concluded that there was no doubt that the conduct of the employer rose to the level of conduct deserving of denunciation. Aggravated damages are to compensate 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 are to punish and denunciate inappropriate and unfair conduct.

In addition, the Court of Appeal upheld the costs award of over \$540,000 against the employer and ordered further costs of the appeal.

This case delivers a stern warning to employers that they cannot act in a high-handed fashion and assert strategic counterclaims with impunity.

*Ruston v. Keddco MFG. (2011) Ltd., 2019 ONCA 125*

---

The purpose of this newsletter is to provide general information and should not be relied on as legal advice or opinion. If you do not wish to receive the Employment Law Newsletter, or wish to receive it at a different address, please send an e-mail to [publications@kmlaw.ca](mailto:publications@kmlaw.ca).

**Nancy Shapiro, Partner**

This edition of Employment Law News was produced and edited by the **Employment Law Group**