
FIRED B.C. WORKER AWARDED OVER \$800,000 BY JURY

*By Barry W. Kwasniewski**

A. INTRODUCTION

In the recently decided wrongful dismissal case of *Higginson v. Babine Forest Products Ltd.* (“*Higginson*”), a Prince George, British Columbia jury awarded a long-time employee damages of approximately \$809,000, of which \$573,000 was punitive damages, for what the jury considered to be improper conduct by the employer leading up to the termination. This punitive damages award is the largest in an employment law case in Canada to date.¹ As employers, charities and not-for-profits need to be aware of the obligation to treat employees fairly and respectfully in the termination process. This Bulletin discusses how a failure to do so may result in substantial claims by terminated employees, including claims for punitive damages.

B. THE FACTS

Larry Higginson had been employed by Babine Forest Products Ltd. for 34 years, and had risen to the position of manager of the electrical department, at Babine’s sawmill in Burns Lake, British Columbia. On October 14, 2009, Higginson was dismissed without notice or any severance package. Higginson sued, and alleged that his dismissal occurred as a result of Hampton Lumber Mills Inc. acquiring the Burns Lake sawmill from Babine in November 2006. In his lawsuit, Higginson alleged that in order to avoid paying out severance packages to long term employees, Babine and Hampton instituted a plan to create a hostile and miserable working environment in hopes that he would quit on his own. When Higginson did not quit, he

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¹ Subsequent to the jury award, the employer filed an appeal. It has been reported that the parties have now settled the case for an unknown amount, and the appeal has been withdrawn.

alleged that the companies created false reasons for his dismissal “for cause”, in order to avoid the legal obligation to provide him a reasonable termination package. After a three week trial, the jury found that there was no just cause for Higginson’s dismissal, and awarded him \$236,000 in compensatory damages for wrongful dismissal, and \$573,000 in punitive damages.

C. WHAT ARE “PUNITIVE DAMAGES”?

While “compensatory” damages are intended to compensate a person for their actual losses, punitive damages are directed toward punishing a wrongdoer (including an employer) for their unjustifiable and egregious actions. In the leading case of *Whiten v. Pilot Insurance Co.*,² the Supreme Court of Canada stated that there are three general objectives of punitive damages: punishment (or retribution), deterrence to the wrongdoer and others, and denunciation (how a judge or jury expresses their outrage to the conduct).³ When determining whether punitive damages should be awarded at trial, the SCC has stated that judges and juries must only award them when it is rational to do so, with caution and restraint, and when compensatory damages do not achieve the above objectives.⁴

The proportionality of an award is also important. Courts will look at the actions of an employer and base the quantum of the award on how reprehensible the conduct of the employer was.⁵ Factors that will be examined are the employer’s intent and motive, whether the employer’s actions were planned and deliberate, whether the outrageous conduct persisted over a lengthy period of time, whether the employer attempted to cover up its misconduct, whether the employer was aware its conduct was wrong, and whether the employer profited from its misconduct.⁶

In the employment context, Canadian courts have awarded punitive damages against employers in the following circumstances:

- for offering reference letters conditional on resignation,⁷

² *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 S.C.R. 595, available online at <http://scc.lexum.org/en/2002/2002scc18/2002scc18.pdf>.

³ *Whiten v. Pilot Insurance Co.* at 68.

⁴ *Sylvan Lake Golf & Tennis Club Ltd. v. Performance Industries Ltd.*, 2002 SCC 19, [2002] 1 S.C.R. 678 at 87, available online at <http://scc.lexum.org/en/2002/2002scc19/2002scc19.pdf>.

⁵ *Whiten v. Pilot Insurance Co.* at 111-112.

⁶ *Whiten v. Pilot Insurance Co.* at 113.

⁷ See *Vernon v. British Columbia (Housing & Social Development, Liquor Distribution Branch)*, 2012 BCSC 133 where Vernon was awarded \$50,000 in punitive damages; available online at <http://www.canlii.org/en/bc/bcsc/doc/2012/2012bcsc133/2012bcsc133.html>

- withholding a paycheque without justification,
- terminating the employee without notice or pay in lieu without reasonable justification,
- notifying members of the community of the employee's termination before notifying the employee,
- lying about the reason for dismissal,
- creating a perception of being dismissed for cause in the community,
- posting negative comments about the employee on social media,
- emotionally traumatizing an employee by raising legal defences based on lies and damaging an employee's reputation in the community.⁸

Employers must be aware that their actions before and after termination could have an impact on any case brought on by a disgruntled former employee. In order to prevent the possibility of punitive damages being awarded, employers must ensure that they treat the employee with respect and abide by the labour laws of their province.

D. CONCLUSION

In cases where jurors or judges are called upon to decide wrongful dismissal lawsuits, the *Higginson* award illustrates that an employer's conduct will be closely scrutinized, and in some instances, a jury or judge's sense of injustice may translate into very significant punitive damage awards. For employers, cases such as *Higginson* demonstrate the need to treat employees fairly in the termination process. It is important that employers know and avoid the type of conduct that may result in punitive damage judgments. The termination of employees is not an easy task, but adopting and following proper procedures will minimize the risks of liability.

⁸ See *Lounsbury v. Dakota Tipi First Nation*, 2011 MBQB 96 where Lounsbury was awarded \$10,000 in punitive damages; available online at <http://www.canlii.org/en/mb/mbqb/doc/2011/2011mbqb96/2011mbqb96.html>.