

# **New Brunswick Court Awards Dismissed Employee Punitive Damages**

*By Barry W. Kwasniewski\**

## **A. INTRODUCTION**

In the recent New Brunswick Court of Queen's Bench decision of *MacDonald-Ross v. Connect North America Corp.*<sup>1</sup> an employee was terminated after five and a half years of service. While she was initially terminated without cause, the employer changed its position after the employee filed a wrongful dismissal lawsuit, alleging that the employee misappropriated company funds. It also contacted the police to file a criminal complaint against the former employee. The court found that the employer had no reasonable basis to allege misappropriation, or any other wrongful conduct. The employer's decision to deal with the employee in this manner was considered by the court to warrant a punitive damage award of \$50,000, in addition to an eight month pay in lieu of notice judgment. This decision highlights the risks of terminating employees "for cause", and serves as a lesson to charities and not-for-profit organizations that alleging cause without proper evidence may be a costly decision should the matter end up before the courts.

## **B. BACKGROUND TO THE DECISION**

The plaintiff began working for Connect North America Corporation (the "employer") in 2002 as a telephone operator. She had several promotions which led to her roles as supervisor, centre manager, and finally, the Director of Marketing. After five and a half years of service with the employer, her employment was terminated in 2007, with no cause for termination alleged by the employer at the time. The initial reason given to the plaintiff for her termination was a 'shortage of work'. The plaintiff subsequently filed an action for wrongful dismissal. Not long after this, the employer alleged termination for cause, and in a letter to the plaintiff, claimed that she had engaged in the unauthorized use of company funds. The employer even went so far as to post on

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<sup>1</sup> [2010] N.B.J. No. 250.

the company website that there had been a significant misappropriation of cash funds by management.

### **C. THE ISSUES AND DECISION**

The relevant issues of the decision, for the purposes of this Bulletin are:

1. Did the plaintiff misappropriate or engage in the unauthorized use of company funds? and
2. Were punitive damages appropriate?

#### 1. Issue One - Cause

The employer alleged that the plaintiff had stolen from the company. However, the court found that the use of unclaimed incentive funds as a petty cash fund for small parties, minor incidental expenses and occasional small pay advances was authorized and condoned by the employer's management. As a result, the plaintiff did not engage in the unauthorized use or misappropriation of funds by permitting these funds to be used for such purposes, or by overseeing or managing the funds. The court ultimately found that there were no grounds for the dismissal of the plaintiff and she was wrongfully dismissed from her employment.

#### 2. Issue Two - Damages

In deciding whether punitive damages were appropriate, the court reviewed the legal principles as developed by cases decided by the Supreme Court of Canada.<sup>2</sup> Since punitive damages are usually seen as the exception rather than the rule, the threshold issue in awarding such damages is whether the defendant's "conduct is so outrageous that punitive damages are rationally required for the purposes of deterrence, denunciation and retribution."<sup>3</sup>

The employer in this case made a serious complaint to the police of fraud and misappropriation that was baseless and without foundation, and in direct response to the commencement of legal proceedings for wrongful dismissal by the employee. Also, in addition to these allegations, the employer made inappropriate postings on the company

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<sup>2</sup> The leading case being *Whiten v. Pilot Insurance Co.* [2002] 1 S.C.R. 595, 2002 SCC 18.

<sup>3</sup> *Delphinium Ltee v. 512842 N.B. Inc.* (2008), 333 N.B.R (2d) 291 at para 50.

website which were deliberately targeted at the employee to disparage and intimidate her. While the postings did not specifically name her, the court found that there was a serious implication that the information provided on the website was referencing the employee.

As a result of these actions by the employer, the court held that its conduct in concocting cause after-the-fact based on unfounded allegations to the police was reprehensible and egregious. Although this kind of conduct is rare, the judge ruled that for the purposes of deterrence, denunciation and retribution, it was necessary to award punitive damages. Also, the judge ruled that it was important for employers to be reminded that they may be liable for any type of “brutish and reprehensible conduct” towards employees.<sup>4</sup>

The court awarded the plaintiff \$50,000 in punitive damages. In awarding this amount, the judge took into consideration several factors including: the blameworthiness of the employer’s conduct, the vulnerability of the plaintiff at the time of dismissal, the harm directed at the plaintiff, the need for deterrence, and the advantage the defendants sought by seeking to avoid damages for wrongful dismissal.<sup>5</sup>

#### **D. CONCLUSION**

The Supreme Court of Canada has made it clear that punitive damages should only be awarded in exceptional circumstances. As a result, punitive damages are relatively rare in wrongful dismissal cases. However, the outcome of this decision demonstrates that the court will not hesitate to impose punitive damages on employers, under the right circumstances. This decision is a useful reminder for employers to act in good faith when dealing with employees upon termination.

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<sup>4</sup> *Supra* note 1 at para 91.

<sup>5</sup> *Ibid* at para 92.