

**EMPLOYER FORCED TO PAY \$107,554 FOR INTERFERING WITH FORMER EMPLOYEE'S
NEW EMPLOYMENT**

Drouillard v. Cogeco Cable Canada Inc., [2007] O.J. No. 1664 (Ont. C.A.)

By Geoff Ryans

On May 1, 2007, the Ontario Court of Appeal awarded \$107,554 in damages after it ruled that Cogeco Cable Canada Inc. had induced a breach of an ex-employee's contract with his new employer.

The plaintiff worked with Cogeco in the Windsor area for 15 years. His performance reviews were consistently positive and the witnesses all testified that he was well liked during his tenure with the company. In 1999, the plaintiff left his employ with Cogeco and moved to the United States.

Two years later, the plaintiff returned to Windsor and received an offer of employment from a company called Mastec, which was in the business of servicing Cogeco's equipment. However, on the day the plaintiff was to sign his employment agreement, Mastec received a call from a Cogeco representative indicating that it would be in Mastec's "best interests" to not hire the plaintiff. Mastec later advised the plaintiff that it could not offer him employment in Windsor, as Cogeco was its sole client in the area. Mastec did offer the plaintiff employment in London or Kitchener as alternatives. The plaintiff was forced to turn down those offers as his family obligations prevented him from leaving Windsor at that time.

The plaintiff retained a lawyer, who corresponded with Mastec and Cogeco and appeared to have resolved the issues between the parties. Two months later the plaintiff accepted a new job offer from Mastec. On his first day on the job, the plaintiff contacted Cogeco and briefed them on an equipment problem. Soon after, a Cogeco representative called Mastec and questioned why the plaintiff was working on its equipment. This time, Cogeco specifically advised Mastec that the plaintiff was not allowed to work on its equipment. Accordingly, Mastec had no choice but to terminate the plaintiff's employment.

The plaintiff commenced an action against Mastec for wrongful dismissal and breach of contract, and another action against Cogeco for wrongful interference with his employment. The action against Mastec settled before trial.

The trial judge found Cogeco liable for the tort of wrongful interference with economic relations. The trial judge awarded \$137,535 in lost wages and a further \$62,465 for the plaintiff's "humiliation, embarrassment, loss of reputation and loss of chosen career".

On appeal, the Court found that the three requirements for the tort of wrongful interference with economic relations were: 1) an intent to injure the plaintiff; 2) interference with the plaintiff's business by illegal and unlawful means; and 3) resulting economic loss by the plaintiff.

The Court found that the elements were not made out on the facts of this case. Specifically, Cogeco had not acted in an illegal or unlawful manner. The Court noted that distasteful conduct and/or conduct that breaches a company's internal policy is not sufficient to meet the illegal/unlawful requirement.

Nonetheless, the Court determined that Cogeco was liable for the tort of inducing breach of contract. The Court found that the four elements of that tort were: 1) the existence of a valid and enforceable contract between the plaintiff and Mastec; 2) Cogeco's awareness of said contract; 3) Cogeco's intention and success in procuring a breach of the contract; and 4) resulting damages. The Court ruled that all four elements of the tort had been met.

This decision illustrates that it is inappropriate for employers to act vindictively towards former employees. Without a specific policy giving it the right to determine who works on its equipment, Cogeco had no right to interfere in the plaintiff's employment pursuits in the manner that it did. The Court showed in this case that such interference can result in significant employer liability.

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