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# e2r Alert!

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## Inducement, Bad Faith Conduct and Insensitive Termination Costs Employer \$140,000

The B.C. Supreme Court recently awarded a terminated employee, with less than three months of service, more than \$140,000 in wrongful dismissal and aggravated damages.

The employer in this case made a number of errors, including having two separate employment agreements (one before commencement of employment and one after), inducing an employee to leave secure employment without ensuring that the employee had a valid and enforceable termination clause and conducting the termination in a bad faith and callous manner.

Briefly, the employee had been employed with a different company for nearly two years when he was approached by a third-party recruitment company acting on behalf of the employer. The employee was provided and signed the offer letter provided to him, accepting the position. The offer letter included a provision that the employee would be assigned to a project for a specified period of time, which was expected to last until Sept. 30, 2020, unless it was extended or terminated by the company with prior notice. The offer letter also contained a clause indicating that the employer or employee would need to give one month notice in the event of termination. However, the offer letter also stated that it did not have any legal power and if there were differences between the offer letter and the employment contract, the latter would prevail.

Shortly after starting in his new job, the employee was asked to sign a formal employment contract. The contract stated he would be employed indefinitely and that it superseded all prior agreements. It also reiterated the one-month termination notice requirement.

After two and a half months in the role, the employee was terminated. When the employee asked why he was being let go, he was told he did not have the respect of senior

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management, was not a good engineer or manager, and was “an embarrassment to the company”.

The employee sued for wrongful dismissal claiming that the company promised him employment until at least Sept. 30, 2020 and that he was induced to leave secure employment for the role. As a result, he claimed damages in lieu of the remuneration he would have received through to the end of the contract period, and for the company's bad faith conduct and the insensitive manner in which he was terminated.

While the court agreed with the employer that the expected length of the project did not qualify as a fixed term agreement, the court found that the one-month termination provision in the contract was unenforceable because it failed to comply with the minimum notice requirements provided for in British Columbia's employment standards legislation. In addition, it found that the company induced the employee to leave his former job, and that the termination meeting was “unduly harsh, insensitive, and indeed, insulting”. Taking all of these factors into account, the court awarded six months' pay in lieu of notice (4 months for reasonable notice, 2 extra months on account of the inducement) plus aggravated damages – a total of over \$140,000.

This decision reinforces the obligation to act in good faith, while emphasizing the importance of having an enforceable employment agreement, with a valid termination clause.

As a reminder, please do not hesitate to reach out to an e2r™ Advisor when developing an employment agreement, or when considering a termination. Obtaining legal advice, in advance, can go a long way towards reducing/eliminating unnecessary exposure.