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# e2r Alert!

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## CERB Deducted from Wrongful Dismissal Damages

Recently, in *Reotech Construction Ltd. v. Snider* (2022), British Columbia's Supreme Court reversed a trial court decision that declined to deduct the employee's Canada Emergency Response Benefit ("CERB") payments from their wrongful dismissal damages.

In this case, the employee was laid off at the outset of the COVID-19 pandemic and received approximately \$9,000.00 in CERB payments. He was never recalled to work and after approximately 6 months, the employer decided to terminate him without cause. Thereafter, the employee brought an action to determine his entitlement to pay in lieu of common law reasonable notice.

The trial judge awarded the employee a 4.5 month notice period and opted not to deduct the \$9,000.00 in CERB payments as an offset to the award. The decision was reversed on appeal.

### **Decision**

On appeal, the B.C. Supreme Court decided to reverse the decision as it related to CERB deduction for the following reasons:

- If the CERB payments were not deducted, the employee would be placed in a better position than had the employer not dismissed him from employment - i.e. but for the employee's dismissal, he would not have received both income and CERB payments simultaneously.
- CERB is not similar to regular Employment Insurance benefits, in which the employee pays into a premium and typically has an obligation to repay the benefits received to the government after obtaining a settlement or award for wrongful dismissal damages. CERB is meant to indemnify the employee from loss of employment and has no repayment obligation. With no such repayment obligation, receiving CERB and wrongful dismissal damages results in a windfall to the employee. Offsetting CERB payment from a damages award is justified in order to prevent the windfall.

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**Takeaway**

Although this decision is not determinative for all jurisdictions across Canada, it supports the notion that CERB payments ought to be deducted from wrongful dismissal damages. In this regard, if you encounter disputes with dismissed employees regarding their entitlements to pay in lieu of notice, you ought to consider whether they received CERB payments after their termination.

As always, we recommend reaching out to speak with an e2r™ Advisor if you'd like to discuss this topic further.