



e2r Alert!

Wrongful Dismissal: The ‘costs’ of making unfounded allegations in litigation

In a recent Ontario Superior Court decision, both the plaintiff employee and the defendant employer suffered serious legal cost consequences for making unsubstantiated allegations against each other.

As part of a somewhat disturbing trend among some plaintiff side law firms, legal pleadings are ‘cookie-cutter’ based making allegations of wrongdoing, human rights violations and claims for punitive damages where there is no factual basis for such claims.

Similarly, some defendants and their lawyers take the position that a good offense is the best defense and pursue allegations of cause or misconduct after the fact, often with no factual basis.

In the legal costs award in the wrongful dismissal case of **Gracias v. Dr. David Walt Dentistry, 2022 ONSC 4093**, the judge commented that in his original decision both parties were releasing “the dogs of litigation war and going for the jugular”. The plaintiff claimed human rights violations in her pleadings but abandoned these serious accusations without ever substantiating any part of them. The employer alleged misconduct and further claimed that the employee had falsified her employment search efforts post-termination.

The parties claimed legal costs in the matter and, as promised, the judge was unforgiving as a result of their overly aggressive and unsubstantiated claims.

The employer was denied all legal costs including the significant amount spent on a forensic expert who examined the employee’s job search documents.

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The employee's counsel claimed partial indemnity costs (i.e. not the entire legal costs incurred by the plaintiff) in the amount of \$35,000.00. Despite being successful in the overall litigation, the court denied all legal costs because of the unsubstantiated allegations made by the employee and certain delays she occasioned in the litigation. She was instead awarded just \$17, 587.11. Given the partial indemnity costs noted above, the employee recovered less than 50% of her costs. Clearly the employee recovered much less than she spent to pursue this litigation, the very definition of a Pyrrhic victory.

The lesson - it does not pay to make unsubstantiated allegations either as a plaintiff or as a defendant. A bad offense is not a good defense, it is just offensive.

This decision is good news for employers as it may curb some of the unsubstantiated and excessive claims put forth in legal demand letters and litigation.

If you have any questions about appropriate handling of terminations and related litigation and how these apply to your workforce, please reach out to speak with an e2r™ Advisor.