Top 10 Employment Cases Of 2016

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The top employment cases of 2016 are a mixed bunch that provide some important reminders of key employment law principles:

1. *Paquette v. TeraGo Networks Inc., 2016 ONCA 618* — The Ontario Court of Appeal confirmed that employees are entitled to their bonus during the reasonable notice period unless there is language in a bonus plan that expressly removes this common law right.
2. *Oudin v. Centre Francophone de Toronto, 2016 ONCA 514* — The Ontario Court of Appeal upheld a lower court decision that found an ESA-only termination clause to be enforceable.
3. *Keenan v. Canac Kitchens Ltd., 2016 ONCA 79* — The Ontario Court of Appeal upheld a lower court decision that awarded dependent contractors 26 months' notice.
4. *TCF Ventures Corporation v. The Cambie, 2016 BCSC 1521* — The British Columbia Superior Court reminded us of the perils of mischaracterizing a worker as an independent contractor instead of an employee.
5. *Joshi v. National Bank of Canada, 2016 ONSC 3510* — A motions judge found that an allegation of failing to provide an employee with an opportunity to respond to or participate in a workplace investigation could support a cause of action for bad faith.
6. *Howard v. Benson Group, 2016 ONCA 256* — The Ontario Court of Appeal reminded us that where a fixed-term contract is terminated prior to the end of its term, and there is no early termination clause, the employee is entitled to payment to the end of the term and is not obligated to mitigate.
7. *Computer Enhancement v. J.C. Options, 2016 ONSC 452* — An excellent examination of the enforceability of restrictive covenants and the return of the key employee doctrine.
8. *Wilson v. Atomic Energy of Canada Limited, 2016 SCC 29* — The Supreme Court of Canada held that the Canada Labour Code only permits federally regulated employees to be dismissed with cause.
9. *Gordon v. Altus, 2015 ONSC 5663* — Punitive damages were awarded by an Ontario Superior Court where an employer falsely alleged cause at the time of termination.
10. *Shoan v. Attorney General of Canada, 2016 FC 1003.* This decision is an excellent reminder of the importance of conducting a fair and unbiased workplace investigation. Here, Shoan was a Commissioner with the CRTC. A colleague filed a harassment complaint against him pursuant to the CRTC's Harassment Policy,

in relation to a series of emails that he had sent her that she alleged were humiliating and undermined her credibility. An external investigator was retained who ultimately found that Commissioner Shoan's behaviour constituted harassment. The Chairman of the CRTC received and reviewed the Investigation Report and accepted it, and implemented corrective measures vis-à-vis Commissioner Shoan.
Commissioner Shoan then commenced a judicial review of the Chairman's acceptance of the Investigation Report, on the basis that the standard of procedural fairness had not been met. The following were his grounds for review:

- The Investigator was adversarial with him during the interview process;
- The Chairman was in a conflict of interest because he participated as a witness in the investigation and was the ultimate arbiter of the complaint; and
- The Investigator broadened the scope of the investigation beyond her initial retainer.

Justice Zinn of the Federal Court granted the judicial review application, holding that the investigation violated the standards of procedural fairness and the Investigation Report and decision of the Chairman was set aside. The basis for this decision was that there was an apprehension of bias on the part of the investigator. Examples of this were that the Investigator was argumentative and interrupted him, shook her head and frowned openly, and that other witnesses gave evidence that they felt from their interviews with the Investigator that the outcome of the investigation was predetermined.

The lack of procedural fairness also stemmed from the fact that the Chairman was a witness in the investigation and more than simply a witness that provided background information on the CRTC. To the contrary, his evidence in the Investigation Report was that Shoan was "toxic". Despite his extreme opinion of Shoan, the Chairman was the arbiter of the Investigation process.

This decision is an important reminder that a high degree of procedural fairness is required in a workplace investigation. Employers must provide the same rights and courtesies to the complainant and the respondent. Workplace investigators must also remain neutral and maintain the appearance of neutrality throughout the process, and stick to the mandate provided when retained.

By

Naomi Calla

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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