

## ***'Till Death Do Us Part...***

What happens to an employee's entitlement to notice of termination and severance when they die? A recent Ontario Superior Court of Justice decision has shed some light on how employers are required to navigate these uncommon circumstances.

In *The Estate of Cristian Drimba v. Dick Engineering Inc.*, Mr. Drimba was diagnosed with a debilitating terminal illness. The Company put him on a medical leave of absence and kept his position open in the event he recovered. Unfortunately, Mr. Drimba passed away approximately 3 months after commencing his leave of absence. Upon his death, the Company did not provide Mr. Drimba with notice or severance under the Ontario *Employment Standards Act, 2000*. As a result, the plaintiff pursued this claim and argued that Mr. Drimba's illness caused a frustration of contract, entitling him to notice of termination and severance upon his death.

Ontario's *Employment Standards Act, 2000* specifies that although a frustration of contract disentitles an employee from receiving notice and severance, where the frustration occurs due to *illness or injury*, the employee is entitled to these payments. The ultimate question at issue in this case was what caused the frustration of contract...the illness or the death?

The Court concluded that in light of Mr. Drimba's terminal prognosis, it was apparent that it was highly unlikely that he would ever return to his employment. Accordingly, his illness resulted in a frustration of contract at some point during his medical leave of absence entitling him to notice of termination and severance.

This decision reminds employers in Ontario that when an employee is unable to return to work due to a critical illness that the employee is entitled to termination and severance pay (where applicable). Please contact e2r if you have any questions regarding the foregoing.