

Is a Final Release Enough? Federally Regulated Employers and Unjust Dismissal Claims

Federally regulated employees (non-managers) who have completed 12 months of service and are terminated in the absence of just cause, may be eligible to file an unjust dismissal complaint under section 240 of the Canada Labour Code (“CLC”). In the event the appointed adjudicator finds the dismissal to be unjust, the adjudicator has a number of options available to her/him including reinstating the employee with full back pay!

But why would an employer care about an unjust dismissal complaint if the former employee received severance monies and signed a release?

The recent Federal Court of Appeal decision in *Bank of Montreal v. Li* gives us the answer.

The decision involved an employee who had been terminated from her position after 6 years of service. The Bank offered the employee a generous severance package (in excess of her entitlements under the CLC) conditional upon the employee executing a release. After signing the release, the employee, to the surprise of the Bank, filed a claim for unjust dismissal.

At trial, the Bank understandably argued the release the employee had signed in connection with receiving the severance monies barred her from bringing the unjust dismissal complaint. To the surprise of the Bank, however, the Court did not agree. The Court said the CLC does not permit the contracting out of the unjust dismissal protections of the CLC. So the fact the employee accepted the severance monies and signed the release was irrelevant. She retained her right to bring a claim!

Given the apparent unfairness to the Bank, the Bank appealed to the Federal Court of Appeal. This time fairness would prevail! On January 24, 2020, the Federal Court of Appeal dismissed the employer’s appeal!

Key Takeaways: Federally regulated employers should remember that even if a signed release is obtained following an employee’s termination, an employee may be able to pursue an unjust dismissal claim under the CLC. One strategy an employer may utilize to mitigate this risk could be to limit payment upon

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dismissal to the minimum statutory entitlements required by the CLC, and to make any gratuitous offering available only after the 90-day limitation period for filing an unjust dismissal complaint has lapsed.

If you have any questions regarding terminations of federally regulated employees or unjust dismissal complaints, please contact e2r® to speak with an Advisor.

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