

## **UNLAWFUL INTERFERENCE WITH CONTRACTUAL OR ECONOMIC RELATIONS**

This document focuses on the recent decision of Mr. Justice Richard Gates of the Ontario Superior Court of Justice in *Drouillard v. Cogeco Cable Inc.*<sup>1</sup>

While *Drouillard v. Cogeco Cable Inc.* emanates from the trial court of another province, it is persuasive authority in British Columbia, and should be considered in cases involving a similar fact pattern.

### **Facts**

For approximately 15 years, a cable technician named Kevin Drouillard (the “Plaintiff”) was employed by Cogeco Cable Inc. (the “Defendant”) in Windsor, Ontario. The Defendant “enjoy[ed] a virtual monopoly on the [c]able [t]elevision and fibre optic business ... in Windsor and [the surrounding area]” [at para. 3].

In December 1999, the Plaintiff resigned from employment with the Defendant in order to pursue employment opportunities in the U.S. cable industry. Around two years later, the Plaintiff returned to Windsor hoping to resume his former career.

The Plaintiff was twice employed by Mastec Canada (“Mastec”), an “independent outside contractor which supplies highly skilled technicians ... to undertake cable and fibre network installations and servicing for [the Defendant and other much smaller customers]” [at para. 4].

In February 2001 – before the Plaintiff reported for his first shift – Mastec advised him that it could not keep him in employment. The Plaintiff was rehired by Mastec in May 2001, but was dismissed after having worked for less than half a day.

Mastec conducted itself the way it did on account of certain communications from representatives of the Defendant. The communications were to the effect that the Defendant did not want the Plaintiff working on any plant, premises or equipment belonging to it.

There was evidence that – prior to the communications from the Defendant’s representatives – Mastec’s managers:

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<sup>1</sup> *Drouillard v. Cogeco Cable Inc.*, [2005] O.J. No. 3166 (S.C.J.).

- (a) were “excited about the prospects of [the Plaintiff] coming to work for Mastec because his experience and skill level meant that [the] company could bid on bigger and higher end jobs in the cable and fibre optic business” [at para. 15]; and
- (b) “because the Plaintiff possessed such good and valuable skills ... very much wanted him to work for Mastec” [at para. 83].

At trial, it turned out that the communications from the Defendant’s representatives were the result of a personal vendetta of one of the Defendant’s managers, Leo D’Agostini, against the Plaintiff. More specifically, it became apparent that Mr D’Agostini “harboured some resentment or dislike of the Plaintiff” [at para. 47].

The communications of the representatives of the Defendant to Mastec came as a surprise to the Plaintiff. He was:

- (a) under the impression that “he got along well with everyone [at the Defendant] and was a respected member of [the Defendant’s] team” [at para. 13]; and
- (b) “not aware that anyone [at the Defendant] harboured any ill will toward him” [at para. 13].

In fact, when the Plaintiff resigned from employment with the Defendant in December 1999, he was given a going-away present and a farewell card signed by virtually every employee at the Defendant’s office.

Moreover, on a number of occasions during the course of his employment with the Defendant, the Plaintiff underwent performance evaluations. The performance evaluations made it “very obvious that [the Plaintiff] was thought of as a highly skilled and competent employee and technician” [at para. 29].

The Plaintiff subsequently endeavoured to find alternate employment relating to his line of work but “because of the dominance of [the Defendant] in the ... marketplace, there was no other similar employment available to him” [at para. 8]. For instance, when the Plaintiff attempted to secure employment at Silverline Cable, an entity similar to Mastec, he was “advised by its owner ... that although he would be very interested in hiring the Plaintiff, there was a rumour floating around that he could not do so” [at para. 18].

## **Issue**

Mr. Justice Gates characterized the “central issue ... [as being] whether or not there ... [was] an unlawful interference with [the Plaintiff’s] contractual and economic relations with Mastec, for which ... [the Plaintiff] ... suffered damages” [at para. 7].

## Tort of Intentional Interference with Contractual or Economic Relations

Mr. Justice Gates prefaced his consideration of the “central issue ... [of] whether or not there ... [was] an unlawful interference with [the Plaintiff’s] contractual and economic relations with Mastec” with the following statement:

“[W]hen [the Defendant] ‘blackballed’ the [P]laintiff from working at Mastec it effectively precluded him from working for any other contractor ... who might have done work for [the Defendant] ... [I]f [the Plaintiff] had tried to work for any [other contractor] on [the Defendant’s] projects, [the Defendant] would have raised the same objection it did when he tried to work for Mastec.

[T]he Plaintiff [was] left in the position of having nowhere to turn in the [c]able technology field in [Windsor and the surrounding area].”

[At para. 76].

Mr. Justice Gates then turned his attention to what he termed “the heart of the Plaintiff’s damage claims” [at para. 95] – the “allegation that [the Defendant] ha[d] wrongfully interfered with [the Plaintiff’s] economic relations in [a] manner ... which ... caused his employment contract with Mastec to be rescinded ... on two separate occasions, in February and May 2001” [at para. 95].

The trial judge relied heavily on the Ontario Court of Appeal’s 2003 decision in *Reach M.D. Inc. v. Pharmaceutical Manufacturers Association of Canada*<sup>2</sup>. In that case, Mr. Justice Laskin – delivering the judgment of a unanimous Court of Appeal – identified three elements as preconditions for the establishment of the tort<sup>3</sup> of intentional interference with contractual or economic relations. Those elements are as follows:

- (a) intention of one party to injure the other;
- (b) interference with contractual or economic relations by illegal or unlawful means;  
and
- (c) resultant economic loss.

Mr. Justice Gates then proceeded to consider whether the Plaintiff had proven each of the foregoing elements.

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<sup>2</sup> *Reach M.D. Inc. v. Pharmaceutical Manufacturers Association of Canada* (2003), 65 O.R. (3d) 30 (C.A.).

<sup>3</sup> A “tort” is a civil or private wrong or injury.

### Intention of One Party to Injure the Other

In discussing the first element of the tort of intentional interference with contractual or economic relations, Mr. Justice Gates underscored that it is not necessary to prove that the predominant purpose of the first party was to injure the second party. This is made clear in *Reach M.D. Inc. v. Pharmaceutical Manufacturers Association of Canada*. It is only necessary to prove that the first party's "act was in some measure directed against [the second party]" [underlining added; at para. 102]. In other words, the first party's "manoeuvre must have been targeted against the [second party] although its predominant purpose might well have been to advance its own interests ... rather than to injure the [second party]" [at para. 102].

Mr. Justice Gates asserted that "it is beyond question ... the actions of [the Defendant] were directed against the Plaintiff personally" [at para. 103]. The trial judge stated the following:

"The primary and only target of [the Defendant's] actions was the Plaintiff. This conduct will satisfy the first element of the tort on its own, even if the predominant purpose might have been to advance [the Defendant's] interests rather than injure the Plaintiff. Here there is no evidence before me that [the Defendant] had any other motive but to engineer the Plaintiff's termination by Mastec. Nor is there any evidence that the Plaintiff's employment by Mastec would, in any way, adversely affect [the Defendant's] business interests."

[At para. 104.]

### Interference with Contractual or Economic Relations by Illegal or Unlawful Means

In considering the second element of the tort, Mr. Justice Gates interpreted the words "illegal" or "unlawful" broadly to mean "without legal justification". The trial judge referred to English case law that suggests a person is acting unlawfully if he or she "deliberately interferes with the trade or business of another, and does so by ... an act, which he [or she] is not at liberty to commit" [at para. 105].

Mr. Justice Gates ruled as follows:

"In this case, while [the Defendant] may have had some right to dictate who works on its equipment, it is the way that it went about this that is all wrong ... I find that the second element of the tort has been met."

[At para. 107.]

The trial judge buttressed his ruling regarding the second element of the tort. He noted that while the Defendant had a corporate policy that allowed it to reject employees of its contractors for "reasonable cause", it was unable to demonstrate that it had such reasonable cause to reject the Plaintiff.

## Resultant Economic Loss

Mr. Justice Gates also concluded that the Plaintiff had proven the third element of the tort of intentional interference with contractual or economic relations. The trial judge had the following to say:

“In the case at hand, there can ... be no dispute ... that the Plaintiff ... suffered an economic loss ... when he was first offered a job by Mastec which almost immediately at the threat from D’Agostini, it withdrew. As a consequence, he was placed in a state of limbo and to make matters worse, he suffered a second humiliating experience at the hands of [the Defendant] in May when he was once again hired by Mastec ... and then he had to be re-terminated ...

On two occasions he had a job and on two occasions it was taken from him. That he has suffered an economic loss is obvious.”

[At paras. 109 and 110.]

## **Quantum of Damages**

After determining that the Plaintiff had proven the three elements of the tort of intentional interference with contractual or economic relations, Mr. Justice Gates turned his mind to the quantum of damages. He began his analysis with the following observations:

“But for the tortious conduct of [the Defendant], it is reasonable to assume [the Plaintiff] would have remained employed by Mastec on a full-time basis. This is particularly so, given his exemplary work record at [the Defendant] before leaving to work in the United States, his highly developed skills level and the very positive professional and technical regard with which he was held by [the Defendant’s] [m]anagers, not to mention the affection from his fellow employees.”

[At para. 113.]

Mr. Justice Gates ruled that the Plaintiff was entitled to be compensated for all damages that flowed from the tortious conduct of the Defendant. The trial judge awarded the Plaintiff \$137,535 as compensation for lost earnings.

Mr. Justice Gates also awarded the Plaintiff \$62,465:

- (a) for “the humiliation and loss of reputation [he suffered] and most importantly, the loss of his career” [at para. 139]; and
- (b) “to ... compensate ... for the invasion of a right” [at para. 140].

The trial judge characterized the Defendant's conduct as "malicious and punitive" [at para. 139] and was critical of "the conduct of various employees and managers of [the Defendant]" [at para. 143].

### **No Liability Imposed on Mastec**

In passing, we note the following interesting point. Mr. Justice Gates declined to impose any liability on Mastec. He stated the following:

"At first glance, one might be tempted to impose some liability on Mastec for hiring and then almost immediately terminating [the Plaintiff's] employment ... [in February and May 2001]. However, I am satisfied from the evidence that it had a legitimate business concern to keep its primary customer happy ..."

[At para. 96].

### **General Recommendations**

A number of lessons can be learned from *Drouillard v. Cogeco Cable Inc.* They are as follows:

- (a) It is critical that employers be vigilant when giving references in respect of former employees.
- (b) References that overstate or misstate the poor performance of former employees can expose employers to damages for, among other things, the tort of intentional interference with contractual or economic relations.<sup>4</sup>
- (c) It may be advisable for employees to only provide written references that are signed by members of senior management.
- (d) References should be accurate and truthful in their terms. Employers should have solid grounds for alleging poor performance on the part of former employees.
- (e) Employers may want to consider implementing policies that deal with the provision of references. Employees should sign off on such policies at the commencement of their employment. Such policies should be published and consistently applied.
- (f) Employers should consider informing former employees of the exact references they will be providing to prospective employers.

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<sup>4</sup> In addition, references that overstate or misstate the poor performance of former employees may expose employers to damages for defamation or negligent misstatement or misrepresentation.

(g) It is advisable to have counsel vet subjective commentaries about the poor performance of former employees.

Please do not hesitate to contact any lawyer at our firm if you have questions regarding or if you wish to have information or advice on:

(a) the tort of intentional interference with contractual or economic relations;

(b) the implications of giving references; or

(c) any other labour or employment law issue.

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\* Every effort has been made to ensure accuracy in respect of this document. The comments, however, are necessarily of a general nature. Clients and other interested parties are urged to seek specific advice on matters of concern and not to rely solely on the text of this document. \*