



## Court of Justice certifies a class action for wrongful dismissal despite prior claims made under the Employment Standards Act, 2000

March 20, 2014

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In its recent decision, [Brigaitis v. IQT, Inc. \(c.o.b. IQT Solutions\)](#), the Ontario Superior Court allowed a group of terminated employees to join part of a class proceeding against their former employer, even though many of the employees had benefitted from orders issued by the Ministry of Labour (the Ministry) as a result of claims made by certain of the employees under the [Employment Standards Act, 2000](#) (ESA).

On January 2, 2014 Justice Perell certified a class proceeding by over 520 wrongfully terminated employees against their now bankrupt employer, IQT Solutions (IQT). The former employees were terminated without notice and did not receive any pay in lieu of notice, severance pay or payment for accrued vacation pay owing to them. In their certification motion, the former employees alleged that the directors of IQT misappropriated funds for their personal use and mismanaged company funds when they knew that IQT was on the eve of insolvency. The class action sought damages for wrongful dismissal, conspiracy, negligence, inducing breach of contract, breach of fiduciary duty and oppression under the [Business Corporations Act](#) (Ontario).

The defendants challenged certification in part based on the fact that over half of the class had already obtained relief under the ESA and, as such, it was an abuse of process to attempt to collect twice on the same claim.

### Decision

Justice Perell held that a class action was an appropriate way to advance the claims of all of the former employees. In his judgement he divided the class into three subgroups (1) the former employees who had filed claims under the ESA and received orders in their favour from the Ministry; (2) those who did not file claims under the ESA but nonetheless benefited from the Ministry's orders; and (3) those who did not file a claim and were not covered by the orders.

Although many (approximately 75%) of class members were covered by the Ministry's order, Justice Perell declined to completely exclude them as members of the class. Rather, having divided the class into above-mentioned subgroups, he considered whether each subgroup could seek a remedy under the causes of action advanced by the former employees.

Firstly, he held that, while the first group of former employees could not seek an additional remedy for claims that were covered under the Ministry's orders, the claims for negligence, conspiracy, inducing

breach of contract and oppression were claims that were not part of the ESA proceeding and thus, all former employees were permitted to seek a remedy under these causes of action.

Second, Justice Perell held that those who did not voluntarily seek compensation under the ESA were not precluded from claiming wrongful dismissal as part of the class. His rationale was based on his literal interpretation of Section 97 of ESA, which prohibits an employee who files a complaint under the ESA for termination or severance pay from commencing a civil proceeding for wrongful dismissal. He held that this prohibition against commencing a civil proceeding only applies to those individuals who actually filed a claim. However, he further stated that these employees will have their own trials to determine what they are owed as a result of their wrongful dismissal claim and will have to return any amount that they recovered in the ESA proceeding.

Lastly, Justice Perell stated that while, the purpose of Section 97 of the ESA is to prevent employees from filing a complaint under the ESA and also advancing a civil proceeding on the same basis, the ESA must not be taken outside of its intended scope associated with wrongful dismissal.

#### Our Views

This decision is another example of a court finding a class action to be the preferable procedure for claims arising out of a mass termination of employees even where the common issues trial will not dispositive of all issues. In this case, it comes against a backdrop of claims asserted through the mechanisms under the ESA. Together with the overtime class action cases, this is a further example of the potential breadth of class action proceedings in the employment arena.

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