



Court of Appeal reduces punitive damages award in landmark Wal-Mart case

20 juin 2014

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The Ontario Court of Appeal recently released its decision in [Boucher v. Wal-Mart Canada Corp.](#). The trial decision, which we wrote about in this [blog](#), received much attention because of the unprecedented \$1.46 million in damages awarded to the Plaintiff for wrongful dismissal.

The Court of Appeal decision is significant because although it upholds many of the trial judge's instructions, it reduces the punitive damages awarded by approximately 90% on the basis that such amounts went beyond what was rationally required to punish the defendants and deter their conduct.

Background

The Plaintiff, Meredith Boucher, was a ten year employee of Wal-Mart who resigned from employment after enduring almost six months of abuse on the part of her supervisor, Jason Pinnock. Ms. Boucher alerted Wal-Mart to Mr. Pinnock's behaviour early in the course of his conduct, however little was done to address the issue. Instead, Mr. Pinnock, who had been alerted to Ms. Boucher's complaints by management, escalated his humiliating and demeaning treatment of her.

After several months of this behaviour, Ms. Boucher met with management to request a formal investigation of her allegations. Although an investigation did take place, Wal-Mart ignored numerous incidents Ms. Boucher reported and sought little evidence from other employees who would have confirmed that her complaints were well founded. Wal-Mart concluded that Ms. Boucher's allegations were unsubstantiated and told her that she would be held accountable for making unsubstantiated complaints. Shortly thereafter, Mr. Pinnock humiliated Ms. Boucher yet again by grabbing her by the elbow and berating her in front of a group of colleagues. Ms. Boucher left the store, resigned four days later and commenced a claim for constructive dismissal and damages.

Ms. Boucher was largely successful at trial, and was awarded the following amounts:

1. \$100,000 for intentional infliction of mental suffering and \$150,000 for punitive damages against Mr. Pinnock; and
2. \$200,000 for aggravated damages due to the manner of Ms. Boucher's dismissal and \$1,000,000 for punitive damages against Wal-Mart.

Appellate Decision

Mr. Pinnock and Wal-Mart challenged the jury's findings on liability and the quantum of damages, arguing that the trial judge had incorrectly instructed the jury and that the damages were unreasonable and excessive.

The \$100,000 award for intentional infliction of mental suffering against Mr. Pinnock (for which Wal-Mart was vicariously liable) and the \$200,000 award for aggravated damages against Wal-Mart were upheld. While these amounts were noted to be high, any errors made by the trial judge in the jury address were held to have been inconsequential and causing no injustice. The amounts awarded were determined not to be unreasonable in light of the harm incurred by Ms. Boucher.

The punitive damages awards against both defendants, however, were reduced significantly. The Court of Appeal took into account that the awards against Mr. Pinnock and Wal-Mart for intentional infliction of mental suffering and aggravated damages were already very high and carried with them a strong punitive component. As a result, the additional punitive damages awards against them were held not to be rationally required to achieve the purposes of retribution and denunciation. Accordingly, these awards against Wal-Mart and Mr. Pinnock were reduced from \$1,000,000 to \$100,000 and \$150,000 to \$10,000, respectively.

Notably, with respect to Wal-Mart in particular, the Court of Appeal took into account that its misconduct fell far short of the gravity and duration of misconduct in other cases which had attracted similarly high punitive damages awards. In particular, Wal-Mart's misconduct had lasted less than 6 months, it did not profit from the wrongs committed against Ms. Boucher and it had not set out to deliberately force her resignation.

Our Views

The significant reduction of the punitive damages awarded in this case will provide some relief to employers following the alarm caused by the initial jury decision. We also note that despite the reduction of the jury award, the Wal-Mart case should continue to send a strong message to employers as to the importance of enforcing workplace policies and addressing employee complaints in a fair, timely and effective manner.

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