

June, 2006

Judge Reports Employer and Employee to Canada Revenue Agency

Fedorowicz v. Pace Marathon Motor Lines Inc., a recent case of the Ontario Superior Court, highlights the risks employers face when entering into unconventional compensation schemes with their employees.

WHAT'S NEW AT RUBIN THOMLINSON LLP

- Register now for our innovative "Managing the Disabled Employee" workshop, being held on July 19, 2006. Early-bird discounts expire June 30th!
- Mark your calendars for the next complimentary Rubin Thomlinson LLP breakfast seminar, entitled "There's a Labour Shortage Coming...How Will You Manage?" Invitations have gone out for this June 28th event.
- "Help! I've got to Fire Someone!"
Learn how to complete this unpleasant but necessary task successfully at Rubin Thomlinson LLP's training workshop for employers on July 27th, 2006, led by legal experts Janice Rubin and Christine M. Thomlinson. Stay tuned.
- Watch for "The Guide to Workplace Investigations", written by our very own Janice Rubin and Christine M. Thomlinson, to be published late summer.

We work with employer clients to provide optimal legal solutions to their challenging workplace issues. If you would like to know more about our practice, please do not hesitate to contact us at (416) 847-1814 or via e-mail at contact@rt-law.ca

The Facts

Deborah Fedorowicz worked as a bookkeeper for Pace Marathon Motor Lines, a trucking firm in Brampton. The company was owned by a friend of hers.

During the course of her employment, Fedorowicz and the company participated in a series of financial transactions devised to evade tax and obtain benefits to which she was not legally entitled. On each of the three maternity leaves Fedorowicz took, for example, she received employment insurance benefits based on her claim that she was at home taking care of her newborn. Unbeknownst to the employment insurance commission, she in fact continued to work for the company full-time, and was given cash payments from petty cash equal to her pre-leave wages.

On another occasion, Fedorowicz and her employer decided to increase her salary. Rather than doing this the conventional, legitimate way, the parties agreed that Fedorowicz would be reimbursed for non-existent business travel costs. She thereby submitted false mileage forms.

During Fedorowicz' final maternity leave, her employment relationship broke down. She did not return to work, and eventually successfully sued the company for constructive dismissal. It was during the trial that both parties admitted to engaging in these financial "shenanigans".

Mr. Justice Sproat first rendered his decision on the merits. Then, in a truly remarkable judicial move, and making note of the financial improprieties both had engaged in and admitted to, he ordered that a copy of his decision be sent to the Canada Revenue Agency. The judge reasoned that as the parties had made use of a public forum funded by taxpayers to air their private dispute, he was justified in doing so. The judge's actions will undoubtedly trigger a tax audit, the result of which will be an order for both parties to pay outstanding tax, interest and penalties. As the tax invasion had gone on for many years according to the evidence at trial, this order will be quite sizeable.

Are you aware that:

- On April 26, 2006, the Ontario Liberal government introduced Bill 107, the 'Human Rights Code Amendment Act, 2006'.
- This new Bill proposes to remove the investigative powers of the Ontario Human Rights Commission, requiring individuals who feel they have been discriminated against to file their complaints with the Ontario Human Rights Tribunal instead.
- At the discretion of the Tribunal, an investigation may still be ordered.
- More on Bill 107 in our next Employers' Alert.

What Does this Case Mean for Employers?

- **Crime doesn't pay. Neither does tax evasion.**

This case is a perfect example of the costly consequences of not going by the employment law book. Pay employees as employees, and make sure all remittances are made and are up to date.

- **Expect the unexpected if you cannot resolve your employment disputes privately.**

In our experience, it is always best to try and deal with these issues through negotiation between counsel or through mediation. Aside from the fact that most of our clients do not enjoy going to court, as this case shows quite dramatically, asking a judge to decide for you can have surprising results and unintended consequences. In this case, the parties ended up in a far worse position than they would had they sorted things out themselves.

- **Unlawful compensation schemes based on an "agreement" with an employee are still unlawful and leave the employer exposed.**

What is remarkable about this case was the extent to which both parties actively and willingly participated in the schemes. Neither party had to convince the other. Yet when their relationship eventually broke down, the employer could not argue that it had avoided its legal obligations because the employee had been a willing participant in the scheme. In fact, the employer was particularly vulnerable because it will be its door that the Canada Revenue Agency will knock on first.

This alert is prepared as a service for our clients and other persons dealing with employment issues. It is not intended to be a complete statement of the law or an opinion on any subject. Although we endeavour to ensure its accuracy, no one should act upon it without a thorough examination of the law after the facts of a specific situation are considered. No part of this publication may be reproduced without prior written permission of Rubin Thomlinson LLP. This has been sent to you courtesy of Rubin Thomlinson LLP.