

Courts Confirm that "Wallace Damages" Are Not Automatic

Employers are well familiar with the concept of "Wallace damages." It originated in the Supreme Court of Canada's 1997 decision in *Wallace v. United Grain Growers Ltd.* In *Wallace*, the Court concluded that employees' reasonable notice periods could be increased if their former employers engage in bad faith conduct or unfair dealing in the course their dismissals. What constitutes bad faith conduct or unfair dealing depends on the facts of a particular case; that said, the Court was clear that these damages should be reserved for those cases where employers engage in conduct deserving of the Court's disapproval.

Wallace represented a sea change in employment law and employees' claims for "Wallace damages" became an automatic inclusion in wrongful dismissal actions with even the most benign termination facts. These claims, while not always successful, have been patiently tolerated by the courts. In two recent back to back Ontario decisions, judges have signalled that this patience may be at an end. Indeed, in extreme cases, there may be significant cost consequences for an employee who makes a frivolous claim for *Wallace* damages in a lawsuit.

In *Bryson v. Print Key Inc.* a bindery operator was terminated after three months of being on temporary lay-off. Ms. Bryson sued Print Key for wrongful dismissal and claimed that she was entitled to "Wallace damages" on the basis that:

- Print Key had no intention of recalling her; rather, it used the temporary lay-off provisions of the *Employment Standards Act, 2000* as a ruse to delay providing her with her entitlements under the Act; and
- Print Key failed to provide her with a letter of reference in a timely manner.

The Court found no evidence in support of Ms. Bryson's allegations. Consequently, her claim for "Wallace damages" was dismissed.

Similarly in *Yanez v. Canac Kitchens*, Mr. Justice Echlin expressed his frustration that unfounded claims for "Wallace damages" impede settlement, and, in lengthening the trial of an action, result in a waste of the Court's time and resources. Justice Echlin notes that more than half of the total trial time had been dedicated to addressing, adding his strong disapproval of employees who routinely assert unjustified claims for "Wallace damages." In addition, he provided "notice" to terminated employees and the lawyers who represent them that in future, they may be required to pay costs when specious Wallace claims are pursued.

WHAT'S NEW AT RUBIN THOMLINSON LLP

- We are pleased to announce that Daniel A. Lublin will join us as a new associate, following his call to the bar.
- Our "**Managing the Disabled Employee**" session on September 15, 2005, was well attended and received.
- Invitations have gone out for our "**How to Conduct a Workplace Investigation**" training session, scheduled for October 19, 2005. This is our most popular training program so please register early.

We work with our 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
(September 2005)



EMPLOYERS' ALERT

Courts Confirm that “Wallace Damages” Are Not Automatic (continued)

What Does this Mean for Employers?

- We are hopeful that there will be a move away from routine claims for “Wallace damages.” This will make settlement easier in simple wrongful dismissal actions.
- If such a frivolous Wallace claim is pursued at trial, employers will be in a better position to obtain costs.
- Employers can feel more confident that their termination practices will not be challenged, provided they can show that they were well thought out and professionally and sensitively executed.

DID YOU KNOW?

- **“Disability” composed 55.94% of all new complaints filed with the Ontario Human Rights Commission (2004/2005 Annual Report)**

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.