Ontario Court Concludes Bank Employee's Misconduct Amounted To Just Cause For Termination



On July 23, 2024, the Ontario Superior Court of Justice released its decision in *Arora v ICICI Bank of Canada*, a wrongful dismissal claim filed by a former employee of ICICI Bank of Canada (Bank) terminated for cause. The Court dismissed the case, finding that the plaintiff's conduct breached his duties of loyalty and good faith to the Bank, resulting in the breakdown of the employment relationship.

At the time of his termination, the plaintiff had been employed by the Bank for over 15 years, and held the position of Assistant Vice-President. In October 2020, the Bank's data leakage prevention program flagged numerous emails sent from the plaintiff's work email to his personal account, some containing sensitive information like social insurance numbers.

Upon further review of these emails, the Bank commenced a formal investigation, which concluded that the plaintiff had acted in contravention of the Bank's various policies, his employment agreement, and the duties owed by the plaintiff, as an employee, to the Bank. Specifically, the investigation revealed the plaintiff had:

- shared confidential proprietary information with competitors of the Bank for his own benefit and to the detriment of the Bank
- incorporated a separate company with two subordinates, intending to improperly compete with the Bank by offering consultancy services to financial institutions
- stored information that could be used to identify individuals on the Bank's systems in contravention of the Bank's privacy policy
- been untruthful throughout the Bank's investigation of his misconduct

Following the investigation, the plaintiff was terminated for cause. At trial, the Court agreed the Bank had just cause for termination and dismissed the plaintiff's claim. While the plaintiff had no prior disciplinary record with the Bank, the Court found that the plaintiff's misconduct struck at the heart of the employment relationship and undermined its very foundation by breaching the essential duties of loyalty, honesty, and good faith.

The Court also dismissed the plaintiff's claim for moral damages. The plaintiff had

alleged that the Bank's post-termination conduct was punitive, threatening, and intended to prevent him from working in the industry. Following his termination, the Bank had pressured the plaintiff to sign a settlement agreement with an overly broad non-competition clause, threatened to claim investigation costs if he refused, and filed a counterclaim that was dropped shortly before trial.

While the Court found that the plaintiff was not entitled to moral damages, it expressed concern that the Bank's actions went beyond mere "litigation tactics" and warranted consideration in the context of costs.

Key Takeaways for Employers

This decision serves as a reminder that all employees owe their employers a duty of loyalty, honesty, and good faith. Where these duties have been breached, the employer may have just cause to terminate the employment relationship. However, employers must also ensure that their post-termination conduct towards a former employee is not harsh, punishing, threatening, or coercive.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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