IN FACT AND IN LAW

Labour Law

July 1999

Dismissal for "good and sufficient cause" means the same thing as dismissal for a "serious reason"!!!

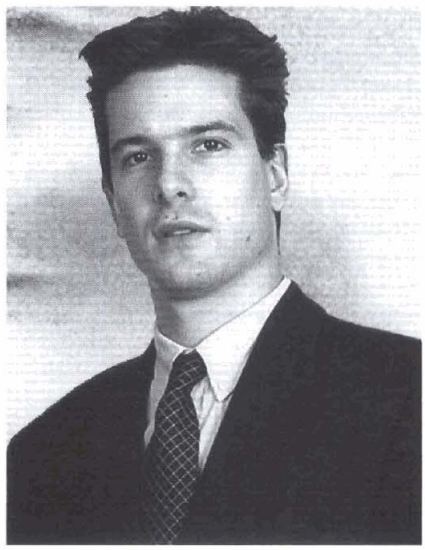
By Dominique L. L'Heureux

According to the current state of Québec law, where an employer dismisses an employee for misconduct, the employer must be prepared to defend the legality of its decision before various tribunals. In certain cases, the employer may even be required to justify its decision, simultaneously or successively before different courts. This duplication of legal proceedings is clearly very costly for the employer. In the recent Superior Court decision of Pisimisis *v.* Les Laboratoires Abbott Ltée, *Justice Danielle Grenier of the Superior Court rendered a decision of major importance for employers. The effect of the judgement is to considerably limit the possibility for a non-unionized employee to successively use different recourses in order to contest his or her dismissal.*

Pisimisis v. *Les Laboratoires Abbott Ltée*, No. 500-17-005496-990, July 9, 1999

The facts

The Plaintiff had been employed by Abbott Laboratories Ltd. for 19 years as a sales manager. Dissatisfied with the rating that his employer intended to give him in his annual performance evaluation, Mr. Pisimisis handed over his identity card



and left the premises. Despite the fact he was repeatedly asked to do so, Mr. Pisimisis refused to return to work. At that time the company was in its peak period and dismissed Mr. Pisimisis for unjustified absence from work and refusal to resume his position.

The specific legal recourse

First, Mr. Pisimisis filed a complaint under section 124 of *An Act respecting Labour Standards*, R.S.Q., c. N-1.1 for dismissal without "good and sufficient cause".

This recourse allows an employee who has been the subject of a dismissal, while in the service of the employer for at least three uninterrupted years, to apply to a labour commissioner to decide whether the dismissal was for "good and sufficient cause".

Mr. Pisimisis' complaint was heard by a labour commissioner, who dismissed the complaint and held that the dismissal was indeed for a "good and sufficient cause".

The general legal recourse

Secondly, Mr. Pisimisis instituted legal proceedings in the Superior Court and claimed $69,500 as compensation for damages that he allegedly suffered because of inadequate notice, and $10,000 in punitive damages.

Regarding the general recourse, it should be noted that article 2091 of the *Civil Code of Québec* entitles the employer and employee, who are parties to a contract of employment with an indeterminate term, to respectively terminate the contract upon giving the other reasonable notice. It must also be borne in mind that article 2094 of the *Civil Code of Québec* stipulates that either the employer or the employee is entitled to terminate the contract of employment without notice if they have a "serious reason" for so doing.

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The employer's position

Considering that Mr. Pisimisis had already availed himself of the specific recourse provided for in *An Act respecting Labour Standards* to contest his dismissal, and given that a decision had already been rendered, Abbott Laboratories Ltd. maintained that Mr. Pisimisis could not use the general recourse provided for in the *Civil Code of Québec*. In other words, Abbott argued that a dismissal for "good and sufficient cause" necessarily implies a dismissal for a "serious reason". A motion to dismiss the action on the grounds of *res judicata* was accordingly presented to the Superior Court.

Judgement of the Superior Court

The first issue decided by Justice Danielle Grenier was that the real subject matter of both recourses instituted successively by Mr. Pisimisis was the same, namely compensation for prejudice allegedly suffered by an employee who is dismissed without "good and sufficient cause" or "serious reason". In this respect, the judge did not consider it significant that the conclusions sought before both tribunals were not identical.

The judge then examined the meaning of the expressions "good and sufficient cause" and "serious reason" used respectively in *An Act respecting Labour Standards* and the *Civil Code of Québec*. After reviewing the scant case law on the issue, the judge held as follows:

> "The Court is of the opinion that "serious reason" and "good and sufficient cause" are the same criteria. Therefore, the result of applying either one is the same: a dismissal for good and sufficient cause is the same thing as a dismissal for a serious reason." (at p. 13) [translation]

Therefore, as far as Justice Grenier is concerned, the ruling by the Labour Commissioner that Mr. Pisimisis had been dismissed for "good and sufficient cause" necessarily implied that he had been dismissed for a "serious reason". The employer's motion to dismiss was granted and the employee's action was dismissed.

Conclusion

From a practical point of view, the effect of this Superior Court decision is to prevent an employee whose dismissal has been upheld by a labour commissioner to then apply to the Superior Court for compensation for reasonable notice in respect of the termination of his contract of employment.

The Court's ruling now enables employers to quickly put an end to duplicate lawsuits. Moreover, this decision is consistent with the growing trend of common law courts to recognize the special jurisdiction of administrative tribunals.

Despite the above, it is still nevertheless necessary to distinguish such cases from those where an employee's complaint is dismissed by a labour commissioner in the context of corporate redundancies and corporate reorganizations, administrative or organizational. In such a case, the labour commissioner is not competent to hear the complaint and must decline jurisdiction. In this situation, the civil or general recourse is the only remedy available.

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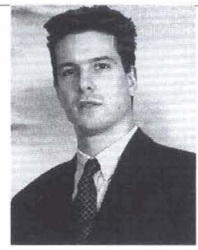
[1] At the time this article was written, the judgement had not been appealed and the time limit to do so has not yet expired.



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For any information pertaining to the contents of this newsletter or to obtain a copy of the judgement, please contact the author at (514) 877-2975 or a member of the Labour Law group at *Lavery, de Billy*.

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