

# Employers' Duty of Good Faith:

## Barely Alive or Alive and Well?



by Craig Stehr

In its recent decision, *Brien v. Niagara Motors Limited*<sup>1</sup>, the Ontario Court of Appeal reviewed the duty of employers to act in good faith at the time of termination. Despite recent developments in the law, employers continue to have a duty of good faith toward employees in the manner of dismissal.

The case involved the termination of a 29-year employee, Ms. Brien, from her job as office manager at the Niagara Motors car dealership. Ms. Brien experienced tremendous shock when she was terminated, since she had never been disciplined and was never provided with warnings about her performance. Her termination was a complete surprise. The dealership told Ms. Brien in her termination meeting that her dismissal was the result of her position being abolished. The dealership, however, had secretly advertised her position, and asked Ms. Brien to train her replacement the following week – after her dismissal.

Only after Ms. Brien commenced court action, the dealership alleged that she had performed her duties incompetently and unprofessionally. It alleged that her misconduct provided “just cause” for her termination. The employer also refused to provide Ms. Brien with a letter of reference or to assist her in any way with her job search.

The trial judge concluded that there was no “just cause” for her termination. Rather, the employer was dishonest, misleading and insensitive at a time when Ms. Brien was most vulnerable. The court concluded that the employer acted in bad faith in the manner of Ms. Brien’s dismissal, and ordered two additional months’ pay to her award of 24 months’ pay in lieu of notice.

The Court of Appeal considered, in light of the Supreme Court’s decision in *Honda Canada v. Keays*<sup>2</sup>, whether Ms. Brien was entitled to damages resulting from the employer’s actions. The court affirmed that employees are entitled to claim mental distress damages that result from their employer’s bad faith conduct at the time of dismissal. The court also agreed that the dealership’s misconduct could lead to an award of mental distress damages; however, the distress that Ms. Brien experienced, “...was not of the nature and scope to qualify for compensatory damages...” since she did not seek any medical or professional assistance, such as therapy, for her mental distress. Employees who suffer mental distress resulting from termination must therefore be mindful to seek appropriate professional assistance in order to fully understand the scope of their suffering. The court upheld the trial court’s award, but

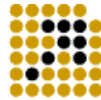
<sup>1</sup> 2009 ONCA 887 (Ont. C.A.).

<sup>2</sup> 2008 SCC 39 (SCC).

subtracted the bad faith damages awarded at trial.

The decision is clear: courts require that employers act in good faith when dismissing employees, but compensation for a breach of that obligation requires that the employee suffer some tangible form of distress. At a minimum, employers must be candid and honest when stating the reason for termination, treat the departing employee fairly and cooperate with the employee's efforts to find alternative employment. Employers who act otherwise will be liable to compensate employees for damages, including mental distress, that result from their bad faith actions. The employer's duty of good faith in the manner of dismissal remains alive and well in Ontario.

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