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Jian Ghomeshi's Lawsuit and the Current State of the Law on Civil Claims by Unionized Employees



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Jian Ghomeshi has withdrawn his \$55,000,000 lawsuit against his former employer, the *CBC*. The reasons Ghomeshi chose to drop the suit have not yet been made clear, but the current state of the law likely would have made his claims difficult to advance in a civil suit.

The *CBC* had previously filed a Notice of Motion asking the Court to dismiss the former radio host's lawsuit against the public broadcaster. Mere days after that notice of motion was filed, the Supreme Court dismissed, with costs, an application for leave to appeal a decision dealing with the very issue of whether a unionized employee (like Ghomeshi) can sue their employer.

The application for leave to appeal dismissed by the Supreme Court was from the Alberta Court of Appeal decision in *Beaulieu v. University of Alberta*, 2014 ABCA 137, which was argued successfully by lawyers at Field Law.

In *Beaulieu*, the employee was a University Professor governed by the terms of a Collective Agreement. The employee sued the Governors of the University of Alberta along with the Dean of the Professor's Faculty and the Chair of his department alleging harassment, denial of access to research funding records, breach of a settlement agreement, breach of confidentiality, defamation, intentional infliction of mental suffering and a failure to stop disciplinary proceedings to accommodate his medical condition. The University Respondents applied to strike the Professor's claim on the basis that the Court lacked jurisdiction because the dispute resolution procedures and the Collective Agreement provided for the exclusive forum for the resolution of the dispute between the parties. The Chambers Judge did strike the Statement of Claim and the Professor appealed to the Alberta Court of Appeal.

On the basis of the Supreme Court of Canada's decision in *Weber v. Ontario Hydro*, [1995] 2 SCR 99, the Court of Appeal dismissed the Professor's appeal. The Court held:

[36] Where labour legislation and a collective agreement establish a dispute resolution procedure, that procedure must be followed and should not be duplicated or undermined by concurrent court action: *Weber* at para. 58; *Young Estate* at para. 29. Under this exclusive jurisdiction model, if the dispute between the parties arises from the collective agreement, the courts have no jurisdiction to entertain an action in respect of the dispute: *Weber* at 50. The core issue is whether the dispute arises from the collective agreement. That issue is resolved by considering the essential character of the dispute and the ambit of the collective agreement: *Kniss* at para. 22. The courts retain a residual inherent jurisdiction in exceptional cases, where the remedy required to resolve a dispute is not available through the collective agreement's dispute resolution procedure: *Disaillon v. Concordia University*, 2006 SCC 19, [2006] 1 SCR 666 at para. 42.

The Professor tried to argue that the collective agreement at issue was different than others previously addressed by the court as it referred to the settlement of disputes "arising from the interpretation, application or operation of the agreement" rather than those disputes arising from "a contravention or alleged contravention of the collective agreement" (at para. 39). However, the Court of Appeal held that nothing turned on this distinction and there is no difference between a dispute relating to the application of a collective agreement and a dispute relating to its violation (at para. 40).

With respect to the essential character of the dispute, the Court of Appeal held that what must be determined is whether the essential character of the dispute concerns a matter that is covered by the collective agreement and that while some aspects of the alleged conduct may arguably extend beyond the ambit of the agreement, that does not alter the essential character of the dispute (para. 43). With respect to the ambit of the collective agreement, the court held that the agreement must be examined to determine whether it contemplates the fact situation at hand (para. 45). The court also went on to say that its residual inherent jurisdiction should only be used in exceptional cases and the question is not whether the same remedy is provided by the collective agreement's dispute resolution procedures, but whether the courts failure to intervene will result in a "real deprivation of ultimate remedy" (at para. 48).

In affirming the decision to strike the claim, the Court of Appeal determined that the essential character of the dispute at hand was the treatment of the Professor in the course of his employment by supervisors in the work place and that the essential character of the dispute, being harassment, was covered by the collective agreement. Moreover the Court found that the dispute resolution procedures in the collective agreement provided effective remedies for the Professor's allegations.

A review of the principles in *Weber* and now *Beaulieu* is timely given the media attention surrounding Ghomeshi. As noted, following his exit from the *CBC* last month he launched a \$55,000,000 lawsuit against his employer alleging breach of confidence, bad faith and defamation. The *CBC's* Notice of Motion asking the Court to dismiss the lawsuit was on the basis that the claims filed by Ghomeshi are "without merit and an abuse of the Court's process". The *CBC* stated that Ghomeshi's only legal avenue is through the union's arbitration process. Now, Ghomeshi has withdrawn the lawsuit.

While the reasons for his decision to drop the suit have not been disclosed, the law on this issue certainly raises questions as to whether Ghomeshi's civil claim against the *CBC* could have been successful when his employment relationship was governed by a collective agreement.

If faced with a lawsuit brought by a unionized employee, it is wise to seek legal advice as to whether the claim can be dismissed on the basis of decisions like *Beaulieu*. Field Law has significant experience in this regard and can help employers in navigating these situations.

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