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# Prinzo v. Baycrest Centre for Geriatric Care

Between

Iole Prinzo, plaintiff, and  
Baycrest Centre for Geriatric Care, defendant

[2000] O.J. No. 683

Court File No. 49374/98

**Ontario Superior Court of Justice**

**Dyson J.**

Heard: January 18-21, 2000.

Judgment: March 6, 2000.

(50 paras.)

*Master and servant — Dismissal without cause — Notice of dismissal — When notice begins to run — Reasonable notice, considerations affecting (incl. bad faith) — Damages — Mental distress — Aggravated damages — Punitive damages.*

Action by Prinzo for damages for wrongful dismissal. She worked at the Baycrest Centre for Geriatric Care for 17 years as the manager of the hairdressing shop. She had problems getting along with her new supervisor. On November 21, 1997, Prinzo fell on Baycrest's premises and injured herself. She worked on light duties from that day until November 27, when her increasing symptoms caused her to leave work. On November 27, her supervisor gave her a letter of layoff, stating that her job was to be eliminated for financial reasons. The date of termination was to be resolved over the next few weeks. Prinzo's doctor stated that she was completely unfit for work from November 27 to February 9, 1998. Throughout this time, representatives from Baycrest continued to telephone Prinzo and send her letters requesting her to come back to work for modified duties. They inferred that she malingered. Prinzo was very upset as a result of the continued harassment. When Prinzo returned to work on February 9, 1998, a meeting was held in which it was inferred that her conduct was harming the residents. This was very upsetting to Prinzo. Prinzo was notified by letter on March 11, 1998 that her last day of employment would be March 31, 1998. At issue was when Prinzo was given notice of termination, what the appropriate notice period was, and whether additional damages were payable.

**HELD:** Action allowed. Prinzo was awarded \$13,545 for wrongful dismissal, less \$4,800 in income earned from an insurance company for four months. She was awarded \$15,000 for aggravated damages for mental distress, as Baycrest representatives continued to threaten Prinzo's fragile health by their harassment. A further \$5,000 was awarded for punitive damages. Prinzo's position was not eliminated due to financial

restraints, but rather because of conflicts with her supervisor. Prinzo was notified of her termination in the November 27 letter, even though that letter did not specify the actual termination date. An appropriate notice period was 18 months. She had mitigated her loss.

**Counsel:**

Bernie Romano, for the plaintiff.

Timothy P. Liznick and Amanda J. Hunter, for the defendant.

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¶ 1 **DYSON J.**— The plaintiff, Iole Prinzo, was born in Italy April 3, 1948. She came to Canada in December 1954. At age 16 she became a hairdresser. She maintained a licence to be a hairdresser until 1998. After a few years in different shops, she purchased her own business, which she ran for ten years. She became a volunteer hairdresser at the Baycrest Centre for Geriatric Care ("Baycrest") for a period of time before being hired formally in October 1980. She became the manager of the hairdressing shop in June 1981. She maintained this position until 1998. She was always a part of management rather than being a member of the union.

¶ 2 The dismissal of the plaintiff was stated to be necessary due to "financial constraints". (More will be said about this later in the judgment.) There was no indication by the defendant that the dismissal was for any cause on the part of the plaintiff. The issues to be decided were:

- (a) the effective date of the notice of termination;
- (b) what is the appropriate notice period?;
- (c) whether the manner in which the plaintiff was terminated warrants damages;
- (d) whether punitive damages should be awarded.

I. The Effective Date of Notice of Termination

¶ 3 The defendant contends that the effective date of notice was November 27, 1997, being the day the letter of that date was given to the plaintiff. This letter was styled "Letter of Layoff".

¶ 4 The letter outlined that it had been decided to eliminate the plaintiff's position as Beauty Shop Manager, purportedly, because of financial constraints. The letter indicated the effective date for elimination of the position will be discussed "over the next few weeks".

¶ 5 The plaintiff contends that the effective date should be March 11, 1998, when the plaintiff was advised by letter that the last day of employment would be March 31, 1998.

¶ 6 Considerable confusion arose as to whether she, in fact, still had a job or not with the defendant because of how the letter was styled and because of the inordinate lengths the defendant went to attempt to get her back to work while off sick. While the plaintiff was off sick from November 27, 1997 to February 9, 1998, Ms. Frost, a nurse on the staff of the defendant, advised the plaintiff's personal physician in December 1997 that the plaintiff had to return to work in order to be dismissed.

¶ 7 I find that the letter of November 27, 1997, does constitute the effective date of notice of termination despite its ambiguity and the confusion caused by the actions of the employees of the defendant in their attempts to get the plaintiff back to work. The plaintiff realized that she was being dismissed and the issues of when she was to leave and how much her compensation package was to be would be decided in the future.

## II. What is the Appropriate Notice Period?

¶ 8 Over the 17-1/2 years that the plaintiff was employed with Baycrest her duties and responsibilities increased a little more each year. She was responsible for hiring and training hairdressers, supervising many volunteers, arranging for the purchase of supplies, teaching students, and responsible for the day-to-day management of the beauty shop. She had a staff of five, six to ten volunteers, plus students. The shop would typically give 35 daily hairdressings. Ninety-nine percent of the residents would use the shop. Although her formal hours were 8:30 a.m. to 4:00 p.m., there was evidence, which I accept, that she would very often be in the shop an hour or two early and often take bookwork home at night. During the regular hours she would be hairdressing about 60% of the time.

¶ 9 Her salary was approximately \$30,500 per annum. Ms. Connie Cepeo worked with and for the plaintiff in the beauty shop for approximately 14 years and still is employed with the defendant. I found Ms. Cepeo to be engagingly straightforward and honest. She stated the plaintiff was "the best", taught her a lot, and treated the "patients like her own mother". There were a number of letters filed from patients, residents and family members of residents who substantiated this assessment. Ms. Cepeo indicated that the shop couldn't turn out as much work and the service has deteriorated since the plaintiff's dismissal.

¶ 10 Mr. David Mahy joined the defendant about a year before the dismissal as Director of Employee Services. He equated the plaintiff's job to a working supervisor or a "lead hand" and stated it was an "entry level supervisory role". The plaintiff's immediate superior considered the job "lower" management. The defendant had paid the plaintiff until approximately November 1998. On this basis it was argued the plaintiff should be entitled to one year's notice, which had been paid if the November 1997 notice was accepted.

¶ 11 Plaintiff's counsel submitted that at least 18 months would be more appropriate under the circumstances.

¶ 12 I quite agree with plaintiff's counsel. Mr. Mahy stated that the work of the hairdressers has a "major impact psychologically" on the patients.

¶ 13 After observing the demeanour and personality of the plaintiff for several days, I have little doubt that she was a major care giver who provided much appreciated comfort to elderly seniors for over 17 years. I appreciate it is difficult to find comparable positions, but to equate the plaintiff's job to an entry-level supervisory role is not helpful.

¶ 14 I find that 18 months' notice is appropriate. Further, I find the plaintiff's conduct after the dismissal completely mitigated her loss.

¶ 15 Under this heading, I accept plaintiff's counsel's calculation of \$13,545.05, which includes pension benefit of \$1,731.09 and so-called "lieu" time of \$774.85, but deduct a further \$4,800 reflecting four months' income from Allstate Insurance for a net figure of \$8,745.05.

### III. Aggravated Damages for Mental Distress

¶ 16 Aggravated damages aim to take full account of the intangible injuries, like distress, diminution of self-esteem and humiliation that may have been caused by the defendant. An award of damages, such as aggravated damages, that goes beyond compensation for the breach of contractual duty to give proper notice must be founded on an independently actionable wrong.

¶ 17 Such compensation is not from the fact of the dismissal itself, but the "manner" of the dismissal.

¶ 18 While the obligation of good faith and fair dealing is incapable of precise definition, at a minimum, in the course of dismissal employers ought to be candid, reasonable, honest and forthright with their employees and should refrain from engaging in conduct that is unfair or is in bad faith by being, for example, untruthful, misleading or unduly insensitive. Intangible injuries caused by bad faith are sufficient to merit compensation.

¶ 19 Acts of bad faith on the part of the employer which are not sufficient to form a separate cause of action may still allow the court to extend a conventional period of notice.

¶ 20 In employment contract cases, if acts on the part of the employer are sufficient to found a separate cause of action, the court is entitled to consider damages under the separate head of aggravated damages. See *Vorvis v. Insurance Corporation of British Columbia*, [1989] 1 S.C.R. 1085; *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701.

¶ 21 There is no doubt that an action will lie for the willful infliction of injury, or the reckless disregard as to whether injury will ensue from an act committed. See *Abramzik v. Brenner* (1967), 62 W.W.R. 332 (Sask. C.A.)

¶ 22 In this case, certain acts of harassment by the employees of the defendant were so extreme and insensitive that they constituted a reckless and wanton disregard for the health of the plaintiff and, therefore, would provide a basis for a separate cause of action. See *Wilkinson v. Downton*, [1897] 2 Q.B. 57; *Timmermons v. Buelow* (1984), 38 C.C.L.T. 136 (Ont. H.C.); *Canada v. Boothman* (1993), 49 C.C.E.L. 109 (F.C.T.D.); *Clark v. Canada* (1994), 20 C.C.L.T. (2d) 241 (F.C.T.D.).

#### IV. Background Prior to November 1997

¶ 23 The evidence indicated that the plaintiff was a model employee at least until late 1996 or early 1997 when Ms. Donna Gates, the Director of Food and Nutritional Services, became the plaintiff's immediate supervisor.

¶ 24 As of March 1996, the plaintiff's supervisor was Mr. Darnowski. His overall appraisal of the plaintiff at that time was "Iole is a conscientious, hard working employee who meets deadlines. She is fiscally responsible and strives to make the residents' experience a positive one".

¶ 25 Ms. Gates' 1997 appraisal was not as positive and the plaintiff quarrelled with Ms. Gates over the assessment. The plaintiff refused to sign the appraisal.

¶ 26 In the spring of 1997 the plaintiff was off sick. Ms. Gates called the plaintiff several times. These calls were extremely upsetting to the plaintiff. Ms. Gates and the medical staff of the defendant were aware of this emotional upset during this illness. On some occasions the plaintiff's husband received the calls. Ms. Gates felt the husband was screening her calls to the plaintiff. Upon the plaintiff's return to work Ms. Gates accused the plaintiff of having her husband screen her calls and indicated that she should "never let that happen again". From the beginning of 1997 the plaintiff stated that Ms. Gates had been piling on the work and harassing her.

¶ 27 At or around this time, Ms. Gates was involved with her immediate superior in the exercise of determining ways and means of cutting costs. Ms. Gates recommended the elimination of the plaintiff's position.

¶ 28 No in depth analysis was presented to determine the effective savings or lack thereof but the estimated saving of approximately \$14,000 was insignificant in the defendant's multi-million dollar budget and obviously imprudent if the invaluable service of the beauty shop deteriorated.

¶ 29 Clearly, the elimination of a troublesome employee to Ms. Gates, under the guise of cost cutting was a much greater motivating factor than the questionable saving of \$14,000.

¶ 30 Ms. Gates recommendation was accepted at the various levels of authority of the defendant and resulted in the so called "Letter of Layoff" on November 27, 1997.

#### V. Background from November 1997

¶ 31 On November 21, 1997, the plaintiff fell in the defendant's parking lot and sustained various musculo skeletal injuries. She remained at work on light duties although the symptoms of injury were increasing and she went off work completely on November 27, 1997, and remained off work until February 9, 1998.

¶ 32 Dr. T. McNabb has been the plaintiff's physician since 1986. Her testimony, along with the plaintiff's, satisfied me that the plaintiff was completely medically unfit for any form of work from November 27 to February 9, including so called modified duties.

¶ 33 I found the plaintiff to be completely straightforward and guileless in her demeanour and testimony and without, a hint of malingering in connection with her illnesses in early and late 1997.

¶ 34 The treatment of the plaintiff while she was ill and away from work was egregious.

¶ 35 In December 1997, Ms. Gates and Ms. Joan Frost, an occupational health nurse, kept calling the plaintiff urging her to return to Baycrest to perform modified work.

¶ 36 On December 19, 1997, Ms. Frost called Dr. McNabb with respect to the plaintiff's return. In no uncertain terms Dr. McNabb indicated the plaintiff was not fit for "any" kind of work. Further, during this conversation Dr. McNabb testified that Ms. Frost stated that it was necessary for the plaintiff to return to work "so that she could be let go". This added to the confusion as to whether or not she had in fact as yet been dismissed. On January 8, 1998, Dr. McNabb sent a letter to Ms. Gates confirming the December 19 conversation with Ms. Frost and clarifying in detail, the total disability of the plaintiff.

¶ 37 On December 23, 1997, the plaintiff received a letter from Ms. Gates. The letter dated December 22, 1997, was as follows:

December 22, 1997

Iole Prinzo

94 Afton Crescent

Maple Ontario

L6A 1G9

Dear Iole:

The Baycrest Occupational Health and Safety department has recently been in touch with your Doctor. Dr. Gratton (Baycrest Doctor) and the Baycrest physiotherapist have specified that you are able to start your modified

duties.

Please be advised that modified duties are available starting Tuesday December 23, 1997. Both Bev Adamson, Manager of the Food and Nutrition Services Department, and the Baycrest Occupational Health and Safety Department will work with you through your modified duty program, (please see attached).

I ask that you notify myself or Bev Adamson (2410) by Tuesday, December 23, 1997 so an actual return to work date can be arranged.

Sincerely,

Donna Gates

Director of Food and Nutrition Services

This letter is patently false and misleading. It implies the plaintiff's doctor had agreed to her return to work, which was entirely, false.

¶ 38 The letter further states that Dr. Gratton at that time specified that the plaintiff was able to start modified duties. A document revealed that Dr. Gratton was going to speak to Dr. McNabb about this issue. Dr. Gratton testified that she never spoke to Dr. McNabb between November 1997 and February 1998. Dr. McNabb was, of course, in the best position to assess the plaintiff's condition.

¶ 39 This letter was upsetting to the plaintiff. She phoned Ms. Gates who indicated to the plaintiff that if she did not return to work immediately, "That it's a work refusal and we will address that". The harassing calls indicated or inferred malingering on the part of the plaintiff.

¶ 40 The telephone calls from the defendant's employees continued. The emotional upset to the plaintiff as a result of such calls was or ought to have been apparent to the callers. The plaintiff's lawyer wrote a letter, January 15, 1998, outlining the stress and anxiety that was being caused and requested that all communications be directed to him, until further notice. This drew a response from John DeLorenzi, Employment Services Officer, indicating the appropriateness and need of communicating with the plaintiff directly about her return to work. The calls continued.

¶ 41 Ms. Gates indicated that she was obliged, pursuant to the provisions of the Workplace Safety and Insurance Board (formerly W.C.B.), to make such enquiries. However, documentation indicated the officials from this board would seek information directly from Dr. McNabb.

¶ 42 When the plaintiff returned to work February 9, 1998, a meeting was immediately arranged with the plaintiff. Under the circumstances, the plaintiff wished to have Ms. Cepeo accompany her. When Ms. Cepeo stated that she wished to stay after being asked to leave, she was "ordered" to leave. Four employees, including Mr. Mahy, met with the plaintiff for 2.5 hours. During the discussions Mr. Mahy in some way said or inferred that the plaintiff's conduct was harming the residents. Mr. Mahy in cross examination said he did not recall such reference and such statement may have been

unwitting or taken out of context, but I accept that something of this nature was said because it was reiterated to Ms. Cepeo as soon as the plaintiff returned to the beauty shop.

¶ 43 The statement was most hurtful and upsetting to the plaintiff. Both the plaintiff and Ms. Cepeo openly wept in the witness box when recalling this statement which suggested that the plaintiff would harm residents that she had served for more than 17 years.

¶ 44 Dr. McNabb testified the manner in which the dismissal was handled caused emotional upset and increased blood pressure. She also said her weight shot up and her diabetes symptoms increased.

¶ 45 The plaintiff continued to suffer from various emotional and physical symptoms, including emotional upset, loss of self-esteem and distress, on a disabling basis for many months after leaving her position. At the time of the trial she was still considerably upset by the manner in which she was treated during the last few months of her employment.

#### VI. Aggravated Damages

¶ 46 The defendant's employees, particularly Ms. Gates and Ms. Frost, were well aware of the physical and emotional health of the plaintiff and would realize the detrimental effect their harassment would have on the plaintiff and yet they persisted such harassment with almost sadistic resolve.

¶ 47 Their obligations to their employer and the Workplace Safety and Insurance Board do not include exacerbating a fellow employee's fragile health by harassment.

¶ 48 The plaintiff is entitled to \$15,000 for aggravated damages.

#### VII. Punitive Damages

¶ 49 The egregious treatment of the plaintiff, as already outlined, warrants punitive damages in the amount of \$5,000.

#### VIII. Costs

¶ 50 Under the circumstances, the plaintiff is entitled to costs on a solicitor and client basis. Further, the plaintiff is entitled to the appropriate interest on the sums awarded.

DYSON J.