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THE IMPORTANCE OF POLICY CONSIDERATIONS ON THE DEDUCTIBILITY OF EMPLOYEE BENEFITS

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In a recent decision, *Yates v Langley Motor Sport Centre Ltd.* 2022 BCCA 398, the BC Court of Appeal provided clarity and guidance on the rules regarding the deductibility of employee benefits from wrongful dismissal awards. While discussed in the context of Canada Emergency Response Benefit program ("**CERB**") benefits, this decision provides useful commentary on all forms of employee benefits, such as Employment Insurance, from wrongful dismissal awards.

Background

The appellant was a former employee of Langley Motor Sport Center Ltd. Early in the pandemic (March 24, 2020), the appellant was placed on a temporary layoff. The layoff period was extended until it expired on August 30, 2020 and the appellant's employment was deemed terminated on March 24, 2020.

The appellant brought a wrongful dismissal claim against Langley Motor Sport, seeking wrongful dismissal damages, as well as aggravated and punitive damages. The BC Supreme Court awarded the appellant 5 months reasonable notice, but deducted \$10,000 from her damages due to the CERB payments she had received. The appellant appealed to the BC Court of Appeal.

When can a benefit be deducted?

In determining whether the CERB benefits should be deducted, the Court of Appeal recognized that, generally speaking, an employer can deduct a "compensating advantage" from damages awards that are payable to the employee. A compensating advantage exists where the employee receives a benefit that compensates the employee beyond their actual loss – either they gained something they would not have but for the employer's breach or the benefit is intended to be an indemnity for the employee's loss and the employee did not contribute to the benefit.

In this instance, the Court of Appeal found that broader policy considerations supported a finding that, while CERB payments do constitute a "compensating advantage", they should not to be deducted from wrongful dismissal awards. Below, we explain why.

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Exceptions to the rule

First, the Court of Appeal looked at the exceptions where a compensating advantage will not be deducted even though the employee is essentially "better off" after the employer's breach than if there was no breach at all. Insurance benefits can fall into the exceptions based on a number of factors, such as:

- The nature and purpose of the benefit the closer it is to an indemnity against the type of loss, the stronger the case for deduction.
- Employee contributions while subject to debate, this is still a relevant consideration.
- Broader policy considerations such as the principles of punishment and deterrence, the desirability of equal treatment of those in similar situations, providing incentives for socially desirable conduct, and the need for clear rules that are easy to apply.

However, there is no one single marker. Ultimately, whether a compensating advantage will be deducted depends on justice, reasonableness and public policy.

Application to CERB

Having considered the above, the Court of Appeal found that although CERB payments do give rise to a compensating advantage because the benefits were intended to be an indemnity for the sort of loss resulting from the defendant's breach, in considering broader policy considerations, the appropriate response was to not deduct the payments from the damages award.

Beyond the fact that it seems unjust for employers who breached an employment contract to benefit from a program that was meant to help workers affected by the COVID-19 pandemic, the court found the following:

- Equal treatment The deductibility of CERB payments would differ depending on whether an employee is terminated before or after the temporary layoff period expired, even if that difference is by a single day. This favours not deducting CERB.
- Incentives Non-deductible CERB payments would remove the incentive for employers to allow the temporary layoff period to expire. This favours not deducting CERB.
- Clear Rules CERB was designed to be applied easily and broadly. This goal would have been negatively impacted if deductions have to await the realization of income tax impacts, if any, on the employee. This favours not deducting CERB.

The court concluded that in light of these factors, and because CERB was introduced as an emergency measure during the early months of an unprecedented global pandemic, it is inappropriate to find that the combination of CERB and damages really leaves employees "better off" after their employment was



terminated than before.

Takeaways

This decision highlights the importance of broader policy considerations that must be taken into account when considering whether employee benefits are deductible from wrongful dismissal damages. Employers should be aware of what employee benefits can be deducted in some circumstances, and should seek advice when it is unclear whether these policy considerations would apply.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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