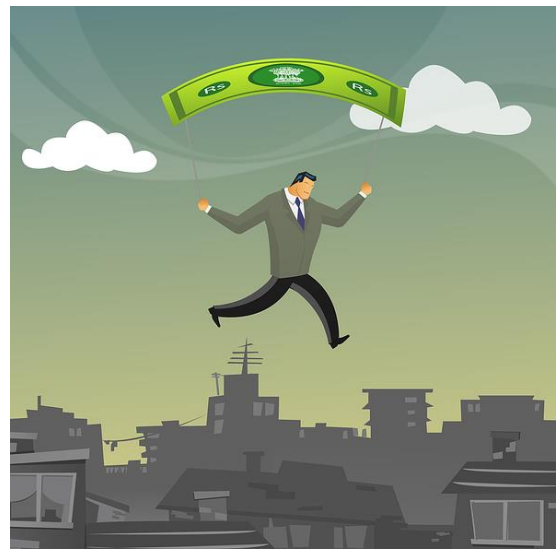




Want your day in court? Be careful what you ask for!

There appears to be a recent trend, perhaps reflective of court backlogs and a frustrated judiciary, whereby employers who are overly aggressive, make false claims or decline a reasonable settlement offer, are being punished by the courts.

In the Ontario wrongful dismissal case of *Giacomodonato v. PearTree Securities Inc.*, 2023, the court took severe offence at the employer filing a 'meritless' counterclaim alleging breaches of restrictive covenants. PearTree counterclaimed for \$2,599,000 and \$1,000,000 of that was a *punitive* damage claim. The court considered this, and the employer's trial conduct, as an "unforgiving, scorched earth, bare-knuckle" approach. It considered the counterclaim to be a strategic and unfounded attempt to intimidate the employee from seeking monies owed to him.



What did the court do? It punished this employer with a brutal legal costs award. While the employee was awarded \$718,103.00 on the merits of his case, the court hammered PearTree with a legal costs award of **\$830,761.00!** The lesson? Stay calm - only litigate if essential and do so respectfully. Or pay the price – twice!

In another Ontario case, *Giduturi v. LG Electronics Canada Inc.*, 2023, the plaintiff in a wrongful dismissal was awarded \$45,000.00 in damages, but also a substantial indemnity costs award of \$54,000.00 for a trial that lasted one day. Unlike the case above, the employer did not engage in hardball tactics, but

instead declined three offers to settle (Rule 49 offers made as part of litigation that the court can consider if the plaintiff's success exceeds those offers).

The employer ended up not only paying their own legal fees, but also paid an amount to the employee that doubled their cost of the claim, and one must assume at least twice his offer to settle. A very expensive **day** in court that was avoidable.

Giduturi is an interesting case for employers who have seen reasonable notice awards climbing ever higher; in this case the employee was not highly paid and not in a senior role, the Court awarded him 12 months reasonable notice for 13 years and 5 months of service. This is a welcome departure from the prevailing theory that every employee is entitled to one month per year of service. It is refreshing to see the appropriate factors being properly weighed and assessed, even if the discount was relatively minor.

