

Whitten & Lublin is a team of legal experts who provide practical advice and advocacy for workplace issues.

## DIRECTOR JAILED FOR FAILING TO PAY WAGES

It just got a little bit more dangerous to be a corporate director in Canada. In a case that may be the first of its kind in Canada, a court recently sentenced Steven Blondin to 3 months in jail for failing to pay his companies' employees their wages. For good measure, the court also assessed a fine of nearly \$250,000.

Mr. Blondin ran a group of six companies in and around the Greater Toronto Area. His companies provided quality assurance testing in assembly for various manufacturers. Altogether, he had a medium-sized business with several dozen employees. Mr. Blondin's companies, however, did not always pay their employees their proper wages. Over two and a half years, 61 employees of Mr. Blondin's companies filed claims with the Ministry of Labour for unpaid wages. The claims were not made in the wake of a bankruptcy; the companies were still operating. The complaining employees included administrative staff, secretarial support staff, tradesmen and managers. The Ministry investigated, and determined that all 61 employees were owed wages. The amount owed to each individual employee ranged from less than \$200 to nearly \$9,500.

The Ministry of Labour made 112 orders to pay wages under the Ontario Employment Standards Act, 2000. Under the Act, directors of companies are personally liable for wages owed to employees, up to a maximum of \$10,000 per employee. Mr. Blondin was the sole director of his companies. As a result, the orders to pay wages were made both against the companies and against Mr. Blondin personally. None of the orders was paid. The orders were also not appealed. Mr. Blondin and his companies simply ignored them.

The Act makes it an offence to fail to comply with an order. On a first conviction, an individual can be fined up to \$50,000, and a company up to \$100,000. Individuals can also be imprisoned for up to a year. Mr. Blondin and his companies were charged and convicted under the Act for failing to comply with the orders. They were ordered to pay the \$142,000 in wages, pay a further \$240,000 in fines, and Mr. Blondin was sentenced to three months in prison.

The provisions of the Act that make it an offence to fail to comply with an order have been in place for many years. Prosecutions, however, are quite rare. This is believed to be the first time anyone has been sentenced to a prison term for failing to comply with an order to pay wages. Obviously, the number of outstanding orders made Mr. Blondin's case unusual. Employers, however, have reason to be concerned. Linda Jeffrey, the then-Minister of Labour, hailed the court decision, and the Ministry has heavily publicized it. Following this precedent, there may be more prosecutions, and more prison sentences.

Mr. Blondin was sentenced in November 2012. The complaints, however, went back as far as March 2007. In the intervening years, he experienced a number of business setbacks. By 2012, he no longer had \$142,000 available to pay the orders. This illustrates the dangers of not dealing with these problems proactively. The first step is to avoid a complaint. Employers, especially smaller employers who lack an

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### OUR LAWYERS

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### IN THE MEDIA

Aaron Rousseau was interviewed by Canada's leading job site and career resource for students and new graduates, [talentegg.ca](http://talentegg.ca), where he explained what both rookies and seasoned employees should know about being an employee in Canada.

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With the recent news about foreign workers to replace RBC employees, Daniel Lublin was asked by The Toronto Star for his opinion. The whole article can be read in the Star, including Mr. Lublin's quote:

*Despite a promise by RBC to identify positions for affected staff within the organization, employment lawyer Daniel Lublin, who has been approached by a couple of the affected employees, remains doubtful of the prospects.*

*"Most banks will say that they'll attempt to find you a job internally. Very few people find comparable employment within the employer. Most of them are ultimately terminated," he told the Star.*

*"The reality is the people I met with are older, extraordinarily long-term employees, only a few years away from retirement, who are unlikely to ever find re-employment in the Canadian marketplace."*

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Daniel Lublin's Interview on the front page of the Toronto Star. Daniel Lublin was again asked for his opinion on the situation surrounding RBC and recent apology to its workers affected by the outsourcing.

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in-house human resources manager, should review their procedures to make sure they are in compliance with the Act. Payment of basic wages is obvious. Orders to pay wages can result from breaches of many of the Act's provisions though, including the requirements for overtime pay, vacation pay, statutory holiday pay, pay for training, and authorization for wage deductions. The second step is to avoid an order. If an employee complaint results in a Ministry investigation, employers need to take the matter seriously, and should either participate directly or retain counsel to do so. The third and final step is not to ignore an order. When the Ministry makes an order, employers need to either appeal or promptly comply. Ignoring the problem could ultimately land you in jail.

## UPCOMING EVENTS

### May 2nd

David Whitten will be co-chairing at the OBA's Annual Employment Law Issues Conference which will include speakers discussing the most recent decisions dealing with workplace investigations, negotiating and structuring settlements, drafting and enforcing restrictive covenants, and the annual "just cause" update.

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Daniel Chodos will be giving a presentation at the Ontario Bar Association's "11th Annual Employment Law Issues" seminar, on the subject of the enforceability of restrictive covenants.

### May 7th & 8th

David Whitten has been invited by the Federated Press to participate as a Lecturer on Executive Employment Contracts. This program will take place over two days in Toronto. The topics featured in the course include:

1. Negotiating The Business Deal
2. Trends In Executive Compensation
3. Termination Issues: Trends In Constructive Dismissal
4. Protection Of Intellectual Property & Non-Disclosure/Confidentiality Agreements
5. Non-Compete And Non-Solicitation Agreements
6. Dispute Resolution And Arbitration Clauses
7. Change Of Control Provisions
8. Use Of Contractual Clawbacks In Canada
9. Negotiating And Drafting Settlement Agreements
10. Pitfalls In Common Executive Contract Clauses

This event is intended to brief Board Members, Senior HR Executives, In-House Counsel, Directors & Officers responsible for executive recruitment, employment and compensation; Executive Employment Consultants & Lawyers.

To register for the course, please refer to the Federated Press website.

For your 15% discount, use this code: **EECT1304/PR**

## LAW BLOG

Top-up while at maternity leave. What are the rules?

My ex-employer refused to pay my severance! Can he do that?

Fired while on maternity leave

Read more at  
<http://blog.toronto-employmentlawyer.com/>

The Toronto Star published this story and Daniel's interview on their front page. His quotes are summed up below:

*For the affected RBC employees, the story has had a happy ending, said Daniel Lublin, a Toronto employment lawyer who had been contacted by some of them to review their termination notices.*

*"It's a David and Goliath story. It proves sometimes the little guy can make a difference," Lublin said.*

*The employees believe it took a public shaming to get action, he added.*

*"They felt the bank wasn't going to do anything about their concerns until the story went public," Lublin said in an interview. "Now they're being treated like celebrities."*

*While RBC's apology is unlikely to change other employers' use of outsourcing firms, Lublin said, it may make them more careful how they treat the affected employees.*

## LATEST NEWS ON TWITTER

Replaced by foreign worker? What are your rights? See my comment on that in @thestar <http://bit.ly/11LBmUS> Do you have to repay your maternity top-up if you're let go? See in my @globeandmail column <http://m.theglobeandmail.com/report-on-business/careers/career-advice/experts/do-i-have-to-repay-my-maternity-top-up-if-im-let-go/article10507548/?service=mobile...>

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