
CANADA / JUDGMENT

Ciric v. Raytheon Canada Limited

2008 BCCA 241

COURT

British Columbia Court of Appeal

DECIDED

10 June 2008

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2008 BCCA 241 Ciric v. Raytheon Canada Limited

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Ciric v. Raytheon Canada Limited,

2008 BCCA 241

Date: 20080610

Docket: CA035102

Between:

Marija Ciric

Respondent

(Plaintiff)

And

Raytheon Canada Limited

Appellant

(Defendant)

Before:

The Honourable Mr. Justice Hall

The Honourable Mr. Justice Smith

The Honourable Mr. Justice Lowry

S. M. Winder and L. Percy

Counsel for the Appellant

T. R. Britnell

Counsel for the Respondent

Place and Date of Hearing:

Vancouver, British Columbia

May 20, 2008

Place and Date of Judgment:

Vancouver, British Columbia

June 10, 2008

Written Reasons by:

The Honourable Mr. Justice Lowry

Concurred in by:

The Honourable Mr. Justice Hall

The Honourable Mr. Justice Smith

Reasons for Judgment of the Honourable Mr. Justice Lowry:

- [1] This appeal is taken from the order of Madam Justice Bruce declaring Marija Ciric entitled to be paid more than \$60,000 by the defendant, Raytheon Canada Limited, in severance, and dismissing the action of a second plaintiff. The judge's reasons are indexed as *Kornerup v. Raytheon Canada Ltd.*, 2007 BCSC 584, 282 D.L.R. (4th) 434. The question that arises is whether Raytheon, which gave Ms. Ciric working notice of termination, was also required to pay her severance when the term of her employment ended because of an agreement that had been made with her.

Termination and Severance

- [2] Ms. Ciric worked for Raytheon for ten years as a software engineer. Her claim is predicated on what the judge described as "assurances" made by the company to its employees, expressed both orally and in writing during January 2004 at a time when the company was downsizing the facility where Ms. Ciric worked. Layoffs had been made, more were expected and were subsequently made, the company was anxious to retain key employees with specialized skills to preserve the facility's viability, and the employees were concerned about their job security. In the judge's words, the employees were told:

- [4] the practice of paying severance pay based upon one month's salary for each year of service, with an upward adjustment depending on the age and level of the employee, would continue to apply to employees who were laid off from the Richmond facility in the future. ...
- [3] The practice was employees were not provided with working notice apart from a few days to clear up loose ends; they were offered the severance package. If the package was declined, they were of course free to pursue their common law right to payment in lieu of notice. If they accepted the package, they were required to execute a release in favour of the company. It was then open to them to obtain alternative employment in the absence of any concern about mitigation compromising the payment to which they were entitled. Severance payments were made in a lump sum.
- [4] Employees who were laid off between January and June 2004 received severance payments in accordance with the practice.
- [5] In September 2005, Raytheon announced the facility would close in September 2006 and that the employees would receive working notice. Termination notices followed. They made no mention of severance. On 19 September 2005, Ms. Ciric was given notice her employment would be terminated on 10 June 2006. She was informed she was entitled to 9.4 months notice which exceeded the working notice by one month. She was to be paid for the month upon signing a release. Ms. Ciric considered she should, in addition, receive the severance package when her employment terminated in June 2006 but, apparently based on legal advice, she said nothing about her dissatisfaction to Raytheon for five and a half months after receiving her notice, and then, in May 2006, this action was commenced. She continued in her employment until it terminated in accordance with the notice she was given.
- [6] The case is pleaded in material respects as follows:
9. In January 2004, the Plaintiffs and the Defendant entered into an agreement for a severance package in the event the company terminated the Plaintiffs' employment without just cause (the "Severance Package Agreement").
10. The material terms of the Severance Package Agreement are as follows: If the plaintiffs continue in their employment with the Defendant after January 2004, and if the Defendant terminates the Plaintiffs' employment without just cause, then:
- (a) The Defendant will pay one month's salary per year of service to the Plaintiffs (the "Severance Package") in addition to any working notice or payment in lieu of notice the Defendant might provide to the Plaintiffs;
- [7] Thus, the case tried was not premised on the company's practice concerning layoffs being a part of the contract of employment made between Ms. Ciric and Raytheon when she joined the company. Indeed Ms. Ciric pleads the practice began the year following the commencement of her employment. The case was confined to the contractual implications of the assurances given by the company to its employees in January 2004. In this regard, it is

clear Raytheon never told its employees it would pay severance in addition to working notice or payment in lieu thereof. As I have said, the company's practice, which it assured the employees was to be maintained in the event of layoffs, was to give no working notice but to offer a choice of accepting the severance package instead of pursuing common law rights. The question the judge addressed was whether the assurances given amounted to a contractual obligation to pay severance as well as giving working notice.

Was There an Agreement?

- [8] Under the heading "Did the Defendant's Assurances Constitute a Unilateral Contract?" in her reasons for judgment, the judge dealt with the question of whether there was an agreement for the payment of severance. The judge reviewed four trial decisions to which she was referred as bearing on the issue before her: *Sloan v. Union Oil Company of Canada Ltd.*, [1955] 4 D.L.R. 664, 16 W.W.R. 225 (B.C.S.C.); *Ballard v. Canada Fishing Co.*, [1982] B.C.J. No. 90 (S.C.) (Q.L.); *Rahemtulla v. Vanfed Credit Union*, [1984] 3 W.W.R. 296, 51 B.C.L.R. 200 (S.C.); and *Starcevich v. Woodward's Ltd.* (1991), 58 B.C.L.R. (2d) 254 (S.C.). The circumstances and considerations in the first two, *Sloan* and *Ballard*, were similar to those in this case and in both instances the employee involved was held to be entitled to a severance pay package on termination that had been earlier offered. The liability of the employers was predicated on what was said to be a unilateral contract such as is recognized in American employment law. In *Sloan*, at 680, the essence of what constitutes a unilateral contract was quoted from *Scott v. J. F. Duthie & Co.*, 125 Wash. 470, 216 Pac. 853 (Wash. Sup. Ct. 1923):

The offer and its acceptance by compliance with its terms created a unilateral contract, which is binding upon the offerer. The principle of mutuality of obligation, as generally applied in the law of contract, has no place in the consideration of unilateral contracts. Such contracts are not based on mutual promises or obligations.

"... Accordingly, where one makes a promise conditioned upon the doing of an act by another, and the latter does the act, the contract is not void for want of mutuality, and the promisor is liable ...; for upon the performance of the condition by the promisee, the contract becomes clothed with a valid consideration...." 6 R.C.L. 687.

- [9] The judge expressed the view Raytheon's assurances to its employees about the continuation of severance payments were made to satisfy the concerns they had about their employment after January 2004. She found the assurances were given with the intention of creating legal relations, by which she meant the assurances constituted an offer that was open to the employees to accept. She said she was satisfied the employees, including Ms. Ciric, accepted Raytheon's offer by their conduct:

- [33] On the facts of this case, I find the defendant's assurances to the employees concerning the continuation of the severance pay allowance was intended to satisfy any concerns they may have had about staying on with their employer after the January 2004 layoff. Historically, job security at the Richmond facility had been very tenuous. The many layoffs over the years had made the employees who remained quite sceptical of assurances made by the defendant about the continued viability of the Richmond facility.
- [34] In January 2004, the defendant was fully aware that key employees were considering voluntary lay off because they were concerned about their job security and the continued existence of the Richmond facility. While the plan to close the facility in the fall of 2003 ultimately ended in a restructuring and a downsizing of the operation, the employees remained concerned that the Richmond facility would in fact be closed. Moreover, the questions posed by the employees in connection with the planned restructuring focused upon the prospect of future layoffs, the closure of the plant, and financial security in the form of severance pay.
- [35] In this context it is reasonable to infer that the defendant promised the employees, including the plaintiffs, that the policy of paying severance equal to one month's salary for each year of service would continue to apply to any future layoff as an incentive for them to continue working for the company. It is also reasonable to infer that the defendant recognized that its restructuring plan for the Richmond facility would have no chance of success if the employees terminated their employment en masse, and that, accordingly, some form of incentive would be necessary to ensure they continued working....
- [36] For these reasons, I find the assurances made by the defendant's representatives were intended to create legal relations and were not merely informational.
- [37] I am also satisfied that the employees, including the plaintiffs, accepted the defendant's offer by their conduct. They continued to work for the defendant and they neither terminated their employment nor accepted voluntary layoffs. As Wilson J. said in Sloan, the plaintiffs were already bound to serve the defendant in return for their salary; however, they were not required to continue working until laid off. The plaintiffs could have quit at any time and given up the right to severance pay. Their continued performance also constituted consideration for the defendant's promise.
- [10] The judge considered that, by continuing to work for Raytheon after January 2004, and nothing more, Ms. Ciric accepted the company's offer. I consider, as I understand was accepted in argument, that is insufficient to constitute consideration because, as recognized in Sloan, at 673, an employee is bound to serve the employer for the salary paid. Given the nature of the offer, there would have to be some additional consideration given by an employee, beyond the existing terms of the employment, to constitute acceptance by conduct. Such consideration may lie, not in the employee continuing to work for the company, but in continuing to do so until laid off. In that event, it would be the employee's performance of the condition contained in the offer that would constitute the consideration

the employee gives and amount to acceptance of the offer by conduct.

- [11] This is not a case where an employee can be said to have made any alteration in her performance of the employment contract because of the assurances given. Had Ms. Ciric said she was leaving Raytheon in January 2004 and been induced by the company's assurances to stay on, different considerations might well have arisen. But nothing like that happened. The assurances may have been given as an incentive to encourage key employees to stay with the company, but at best they remained an offer that could not have been accepted, and a unilateral contract formed, until Ms. Ciric's employment was terminated.

Was the Offer Withdrawn?

- [12] Raytheon's offer, if that is what it was, remained an offer open to be withdrawn before it was accepted. It could only be accepted by Ms. Ciric working until her termination date in June 2006, but well before then, in September 2005, Raytheon purported to withdraw the offer to afford Ms. Ciric the choice of severance by giving her working notice. In Sloan, in addressing the contention the offered severance could be withdrawn at the time the employment terminated, the following observation was made, at 684:

If there was such an offer it existed, in the absence of any notice cancelling it, up to the time when the employee was discharged. Once he was discharged the rights to a termination allowance crystallized and could not thereafter be extinguished by any notice purporting to "terminate" or "modify" it. The offer could be cancelled before the plaintiff was discharged, but not after.

- [13] The judge did not consider whether Raytheon had withdrawn its offer because she concluded it had been accepted by Ms. Ciric continuing to work after January 2004. The judge did, however, under the heading "Did the Defendant Unilaterally Terminate the Contract for Severance and Was It Entitled to Do So?", respond to Raytheon's contention it had withdrawn any offer it had made. She relied on *Merilees v. Sears Canada Inc.* (1986), 24 B.C.L.R. (2d) 165 (S.C.), *aff'd* (1988), 24 B.C.L.R. (2d) 172 (C.A.), and *Bartolic v. Canada Safeway Ltd.* (1998), 50 B.C.L.R. (3d) 338 (S.C. Chambers), for the proposition an employer cannot unilaterally alter the fundamental terms of an employment contract. She said:
- [57] Having concluded that the defendant contracted with the plaintiffs to pay them severance in accordance with its existing policy in the event of their layoff, I find that the defendant could not unilaterally withdraw this contractual benefit without the consent of the plaintiffs.
- [58] I am also satisfied that the right to terminate this benefit unilaterally cannot be implied. The severance pay package was of fundamental importance to the plaintiffs as well as to other employees who survived the January 2004 layoffs. The right to unilaterally withdraw the benefit was not an express term of the agreement and was not a term that would have been reasonably expected or contemplated by the parties.

- [59] If I am wrong in this conclusion, I also find that on the facts of this case the defendant did not give notice that it was terminating its agreement to pay severance pay in accordance with the policy in place in January 2004.
- [60] On September 12, 2005, the defendant announced the closure of the Richmond facility effective September 30, 2006. The announcement also referred to the defendant's plan to provide "working notice", which in some cases may include [in addition, some] pay in lieu of notice. The announcement did not purport to advise the employees that the defendant would no longer be bound by its agreement to pay severance pay based upon its existing practice.
- [61] Even the termination letters sent to the employees a week later provided no express notice that the severance pay policy they had agreed to in January 2004 was thereby terminated. Reading between the lines it became clear to the employees that all they were to receive was "working notice"; however, there was no express reference to the severance pay policy that formed the subject of the agreement between the employees and their employer.
- [62] As a consequence, I find the defendant did not terminate the agreement to provide this benefit to its employees prior to their dismissal. In addition, I find that once the employees accepted the offer by their conduct the defendant could not unilaterally withdraw it whether or not reasonable notice of such a change in terms was provided.
- [14] I cannot accept the notice of termination Ms. Ciric received in September 2005 did not constitute a clear withdrawal of any offer of severance that had been extended in January 2004. Raytheon made it entirely clear to Ms. Ciric no severance was being offered to her. She was being given working notice. She was under no misapprehension, and indeed she took legal advice in that regard soon after her notice was received. If the company's assurances were indicative of an offer to Ms. Ciric, she was given effective notice that it was being withdrawn.
- [15] It is now contended it was not open to Raytheon to withdraw its offer once Ms. Ciric started to perform. She maintains she started to perform immediately the offer was made by continuing to work for the company. Cited in support are comments of the majority in *Baughman v. Rampart Resources Ltd.* (1995), 124 D.L.R. (4th) 252, 4 B.C.L.R. (3d) 146 (C.A.) at paras. 30-31, where it was said an offer made in the context of a unilateral contract cannot be withdrawn once there has been any performance by the offeree, citing a passage in the judgment of Goff L.J. in *Daulia Ltd. v. Four Millbank Nominees Ltd.*, [1978] 2 All E.R. 557 (C.A.).
- [16] In my view, for the same reason Ms. Ciric cannot be said to have accepted Raytheon's offer simply by continuing to work after January 2004, she cannot be said to have partly performed in the sense that she gave any consideration, or could have done so, before she was terminated. Until then, she was serving the company in accordance with her contract of employment. There can be no coincidence of consideration, as she suggests, whereby she was giving consideration in respect of two agreements - the employment contract and the

unilateral severance contract - by the same act of continuing her employment. In the absence of her actually giving something over and above what she was required to give in return for the salary she was paid, she gave no consideration that could constitute any performance of the offer before it was withdrawn.

- [17] Unlike offers given in circumstances where the offeree could be said to have partly performed by doing something that, apart from responding to the offer, would not have been done, Raytheon's offer did not, in the circumstances, lend itself to part performance. Thus, Ms. Ciric could only have accepted the offer by being employed when her employment terminated. It was only then the condition the offer contained would have been fulfilled, and until then it was open to the company to withdraw it.
- [18] I consider Raytheon was entitled to withdraw what is said to have been its offer, in September 2005, before it was accepted, and it did so.
- [19] Although the extent to which the concept of a unilateral contract has found a place in Anglo-Canadian employment law would today appear to be an open question, it does not in any event assist Ms. Ciric in establishing a claim for severance in this action. Unlike the cases of Sloan and Ballard, where the concept was invoked, Ms. Ciric cannot be said to have accepted her employer's offer before it was withdrawn.
- [20] I would allow the appeal and dismiss the action.

"The Honourable Mr. Justice Lowry"

I agree:

"The Honourable Mr. Justice Hall"

I agree:

"The Honourable Mr. Justice Smith"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/Jdb-txt/CA/08/02/2008BCCA0241.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/ciric-v-raytheon-canada-limited-2008>

Prepared on 27 October 2026 · Esheria