



## Cable company liable for inducing breach of contract

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Recently, Ontario's Court of Appeal upheld the trial decision in *Drouillard v. Cogeco Cable Canada Inc.* that held large cable operator Cogeco Cable liable for telling a cable subcontractor, Mastec Canada, that it would not allow its employee, Mr. Drouillard, to work on Cogeco equipment.<sup>1</sup> When this caused Mastec to withdraw its employment offer to Mr. Drouillard, he sued Cogeco. In upholding the trial decision that Cogeco was liable, Ontario's top court clarified the ways in which someone can be liable for causing another party to breach a contract.

Ironically, the plaintiff, Mr. Drouillard, had previously worked as a Cogeco cable and fibre optic installer in Windsor, Ontario before resigning from Cogeco and moving to the U.S. in 1999. It appears that there was no love lost between Mr. Drouillard and his former employer. When Drouillard returned to Windsor two years later and got a job with Mastec, Cogeco told Mastec that it would not allow Mr. Drouillard to work on its equipment "because of his attitude and because his presence on Cogeco's site would be bad for morale".

The trial judge found Cogeco liable for its "malicious and punitive" actions in unlawfully interfering with Mr. Drouillard's economic relations. Cogeco had intended to injure Mr. Drouillard by causing him to lose his job and had interfered with that employment using illegal or unlawful means. Given that Cogeco is the dominant cable company in the Windsor area, Mr. Drouillard was unable to find other work in his chosen field and eventually found work as a conductor with the Canadian Pacific Railway. The trial judge awarded Mr. Drouillard \$137,535 for lost income during 2001-2004, plus \$62,465 in "at large" damages to compensate Mr. Drouillard for his humiliation and the loss of his chosen career.

The Court of Appeal upheld the trial judge's finding of liability against Cogeco – although on a different legal basis. In what might appear to a layperson to be a distinction without a difference, the Court of Appeal found that Cogeco was not liable to Drouillard for unlawful interference with economic relations and, instead, was liable for inducing breach of contract.

For the Court of Appeal, the big distinction between these two economic torts - unlawful interference with economic relations and inducing breach of contract – is found in the word "unlawful". Citing its leading 2003 decision in *Reach M.D. v. PMAC*,<sup>2</sup> the Court said that Cogeco's actions had to be themselves unlawful or illegal for it to be liable for unlawfully interfering with Drouillard's economic relations. It accepted Cogeco's argument that its actions, were not themselves unlawful – even if they had been found to be malicious and contrary to Cogeco's own internal policies.

However, Cogeco was not let off the hook. In his reasons on behalf of a unanimous appeal panel, Rouleau J.A. found that Cogeco was nevertheless liable to Drouillard for the tort of inducing breach of contract on the following basis: (1) Drouillard had an enforceable contract with Mastec; (2) Cogeco was aware of the contract; (3) Cogeco intended to and did procure a breach of the contract; and (4) as a result, Drouillard suffered damages.

The Court of Appeal upheld the trial judge's award of damages for lost income plus "at large" damages, subject to a significant reduction in the total amount of damages to account for Drouillard's employment income from the CPR during the 2001-2004 period.

This decision is an important step in the

development of the law of economic torts; an area of law that also includes the torts of injurious falsehood, conspiracy to injure and intimidation. This is an area of jurisprudence that, in many ways, has developed slowly and cautiously in Ontario. Often, there is a fine line between actions that are tortious and those that amount to permissible, if aggressive, commercial activity. In this case, Cogeco's harmful and malicious motivation to harm Drouillard was easily apparent. However, economic torts such as inducing breach of contract or unlawful interference with economic relations are often raised by competitors suing one another for such things as recruiting key employees or soliciting important customers. In such cases, courts must be wary of inserting themselves into legitimate competitive activity in the marketplace - intervention that can tip the balance in favour of one competitor and thus create unfairness, rather than remedying it.



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<sup>1</sup> For the full decision in *Drouillard v. Cogeco Cable Canada Inc.*, go to the following link:

<http://www.ontariocourts.on.ca/decisions/2007/may/2007ONCA0322.htm>

<sup>2</sup> For the full decision in *Reach M.D. v. PMAC*, to the following link:

[http://www.ontariocourts.on.ca/decisions/OntarioCourtsSearch\\_VOpenFile.cfm?serverFilePath=D%3A%5CUsers%5COntario%20Courts%5Cwww%5Cdecisions%5C2003%5Cmay%5CreachC32896%2Ehtm](http://www.ontariocourts.on.ca/decisions/OntarioCourtsSearch_VOpenFile.cfm?serverFilePath=D%3A%5CUsers%5COntario%20Courts%5Cwww%5Cdecisions%5C2003%5Cmay%5CreachC32896%2Ehtm) Meredith Hayward of this firm acted as counsel for the appellant in this case.