

British Columbia Court of Appeal Limits Class Actions in Respect of Statutorily Conferred Employment Standards Benefits

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On May 1, 2008, the Court of Appeal for British Columbia issued its decision in *Macaraeg v. E Care Contact Centers Ltd.*, confirming that the jurisdiction to enforce the British Columbia *Employment Standards Act*, R.S.B.C. 1996, c. 113 (the BCESA) resides exclusively with the British Columbia Director of Employment Standards (the Director), subject to appeals to the British Columbia Employment Tribunal (the Tribunal). The decision holds that employees cannot bring a civil action – including a class action – based on the BCESA. According to Mr. Justice Chiasson, writing for a unanimous Court of Appeal, the provisions of the BCESA “present a complete code for the granting and enforcement of statutorily-conferred benefits.”

When Cori Macaraeg’s employment with E Care Contact Centers Ltd. was terminated, she commenced an action pursuant to the British Columbia *Class Proceedings Act* (the CPA), with herself as the representative of a class of E Care’s employees alleging that E Care owed its employees overtime wages. Ms. Macaraeg’s claim for overtime hours was not based on a contractual right expressed in a written employment agreement or based on the conduct between employee and employer but rather was a claim she brought solely in reliance on the overtime provisions of the BCESA. In response, the employer brought a preliminary application seeking the following rulings on points of law:

1. Is Ms. Macaraeg entitled to bring a civil action to enforce her statutory right to overtime pay, or does the jurisdiction to determine such claims lie exclusively with the Director under the enforcement mechanisms of the BCESA?
2. As a matter of law, are the minimum overtime pay requirements of the BCESA implied terms of the contract of employment between E Care and its employee, Cori Macaraeg?

The Chambers Judge concluded that payment for overtime in accordance with the mandatory provisions of the BCESA was an implied term in Ms. Macaraeg’s employment contract with E Care and that the BCESA does not preclude pursuing overtime payments in a civil court action.

This Chambers Judge’s decision was a significant departure from the existing state of affairs governing non-union employment contracts in British Columbia. Previously, non-union employees effectively had two ways (excluding human rights claims) for the enforcement of their employment rights, namely: (1) civil causes of action where an employee could go to court to remedy a breach of contract; and (2) a statutory right created under the BCESA where employees could enforce that right by filing a complaint with the Director. The only time the court would get involved in matters arising solely under the BCESA was on judicial review of a decision of the Tribunal.

The ripple effects of the lower court's judgment were already being felt in employment law cases in British Columbia as a subsequent judgment of the Supreme Court of British Columbia, following the reasons in *Macaraeg v. E Care*, ruled that a plaintiff employee was entitled to six (6) years' right of recovery for overtime wages when the BCESA only creates a right of recovery of six (6) months' wages.

On appeal, E Care contended that the Chambers Judge erred in allowing the statutory rights conferred by the BCESA to be enforced by way of civil action. The Court of Appeal allowed the appeal. In so doing, the Court of Appeal held that the BCESA does not allow pursuance of statutorily conferred rights in a civil action as the statute itself provides an effective mechanism for the enforcement of overtime rights.

Further, the Court of Appeal rejected the Respondent's argument that even if the provisions of the BCESA are not enforceable in court by way of an individual action, the CPA created an independent source of authority for pursuing a class action claiming damages under the BCESA. The Court of Appeal followed established law stating that class proceedings legislation is procedural and does not confer substantive rights. Rather, such legislation only allows those with an individual cause of action to pursue their rights collectively through a representative of a class of individuals who have common issues.

In conclusion, the Court of Appeal allowed E Care's appeal in its entirety and answered the questions as follows:

1. Ms. Macaraeg is not entitled to enforce her statutory right to overtime pay in a civil action; the exclusive jurisdiction to determine such claims lies with the Director, subject to an appeal to the Tribunal, all pursuant to the provisions of the BCESA.
2. As a matter of law, the minimum overtime pay requirements of the BCESA were not implied terms of the contract of employment between E Care and Ms. Macaraeg.

In light of this decision, employers in British Columbia may want to revisit their written employment agreements and their corporate policies to ensure that they are in compliance with the provisions of the BCESA and that they are also taking full advantage of the Court of Appeal's decision. The full reasons of the British Columbia Court of Appeal are available at <http://www.courts.gov.bc.ca/Jdb-txt/CA/08/01/2008BCCA0182.htm>.

For further information, please contact [Randy Kaardal](#) or [Eleni Kassaris](#), counsel for the appellant E Care Contact Centers Ltd., in the Vancouver office of Blakes [Labour & Employment Group](#).

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