

Ontario's First Reprisal Ruling Under the *Securities Act*. A Compliance Wake-Up Call for Employers

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For the first time, in *McPherson v. Global Assets Inc.*^[1], the Ontario Superior Court of Justice (the "SCJ") interpreted and applied the anti-reprisal provisions of the *Securities Act* (Ontario) (the "Act"). The SCJ found that Global Assets Inc. (the "Company") terminated its CEO, in part, as a reprisal for engaging in his duties as the Company's ultimate designated person ("UDP") under the Act. This decision serves to warn companies registered with the Ontario Securities Commission that termination of an employee may result in a violation of the Act if the termination is found to be at least partially motivated by that employee's efforts to engage in legislatively protected conduct.

Case Overview

Mr. McPherson was hired to serve as the CEO and UDP of the Company, an investment fund manager registered with the Ontario Securities Commission. As the Company's UDP, Mr. McPherson oversaw its compliance with the Act.

Prior to his termination, Mr. McPherson had notified members of the Company's board of directors that certain issues had come to his attention regarding the Company's compliance with securities laws and the Company's adherence to orders placed upon it by the Ontario Securities Commission. Mr. McPherson argued at the SCJ that one of the reasons the Company terminated him was because he raised those issues, thereby contravening the anti-reprisal provisions of the Act. The Company (along with other defendants related to the Company) argued that they terminated Mr. McPherson because of his performance and that they could not be in violation of the anti-reprisal provisions of the Act because, in order for the anti-reprisal provisions to be triggered, the sole motivation for termination must be reprisal for engaging in protected activity.

The SCJ disagreed with the Company's argument. The anti-reprisal provisions in question states that "No person or company, or other person or company acting on behalf of the person or company, shall take a reprisal against a specified individual **because** the specified individual has," engaged in a protected activity^[2] (*emphasis added*). In this case, Mr. McPherson's protected activity was bringing an Ontario securities law compliance issue to the attention of the Company and its directors.

The SCJ found that the word "because" does not mean "only because" or "solely because", that is, the law does not protect employees from reprisals only when a reprisal is the sole reason for the termination. Instead, it found that, properly interpreted, it means: "[n]o company shall take a reprisal against an employee **if any part of the motivation for reprisal** was the fact that the employee engaged in protected activity"^[3] (*emphasis added*).

Because the SCJ found that the termination of Mr. McPherson was at least in part motivated by Mr. McPherson's engagement in activity protected under the Act, the Company was found to be in violation of the Act's anti-reprisal provisions. Mr. McPherson was therefore entitled to two times the amount of remuneration he would have earned between the date of the Company's violation of the Act and the date of judgment in the amount of \$5,379,808.22.^[4] While Mr. McPherson's remuneration included a discretionary

bonus, the SCJ included the discretionary bonus as part of the “amount of remuneration” that he would have earned if the Company had not contravened the Act, finding that the discretionary bonus was a significant portion of Mr. McPherson's total compensation, and that excluding the discretionary bonus from the remedy under the anti-reprisal provisions of the Act would “significantly undercompensate” him. Furthermore, the SCJ noted that Mr. McPherson did not have the opportunity to earn the bonuses following his termination because of the Company’s violation of the Act, and that there was nothing in the text, context or purpose of the Act to suggest that in such circumstances a discretionary bonus should not be included in the calculation of his remuneration^[5].

Key Takeaways

Employers subject to the Act must carefully assess whether taking measures against an employee that adversely affects their employment may constitute a violation of the anti-reprisal provisions of the Act. Employers should consult their legal advisors for advice in such circumstances so that legitimate measures can be taken against an employee when necessary.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

^[1] [McPherson v. Global Assets Inc.](#), 2025 ONSC 5226

^[2] [Securities Act](#), RSO 1990, c S.5, s 121.6(2).

^[3] Supra note 1 at para 108.

^[4] Supra note 2 at s.121.6(7).

^[5] Supra note 1 at para. 455.

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