

Are Summary Judgment Applications Appropriate For Determining Reasonable Notice Periods In Alberta

September 01, 2017

According to one master of the Court of Queen's Bench of Alberta, the answer to that question is NO.

In *Coffey v Nine Energy Canada Inc.*, 2017 ABQB 417, Master J. Farrington was faced with a summary judgment application in a wrongful dismissal case. The plaintiff, Mr. Coffey, was a long-time employee who was seeking, among other things, an increased reasonable notice period following his termination without cause. Among the issues raised by the defendant company was the jurisdiction of the master in chambers to assess damages.

In his analysis, Master Farrington reinforced the fact that masters in Alberta have no jurisdiction to try actions or to resolve disputed questions of fact where oral evidence is required, and that parties must generally show an "unassailable" case in order to be successful on a summary judgment application. Where he diverged from the conventional position in this area, however, was when he went on to consider the nature of summary judgment applications.

At the outset, Master Farrington recognized that other Alberta masters had previously granted summary judgment in a number of wrongful dismissal cases, including assessing and deciding the appropriate reasonable notice period. In his view, however, those masters were incorrect in deciding that they had the ability to assess damages for the following reasons:

- A summary judgment application asks the court to determine whether a certain result or position is "unassailable". In other words, the court must determine whether an outcome is sufficiently certain such that a trial is unnecessary or not worthwhile;
- In most wrongful dismissal cases, the appropriate reasonable notice period is often an issue. A consideration of the classic *Bardal* factors must be undertaken for this issue, and the court must determine which factors must be accorded greater weight;

- In these cases, the court can reasonably come to different conclusions respecting the appropriate notice period, and still be correct in law. As such, it cannot be said that the result or conclusion is "unassailable".

Master Farrington did qualify his position by providing that summary judgment may be appropriate in some employment law cases. By way of example, he noted that issues of just cause and liability could be decided by a master and then referred to a judge for assessment of damages and notice period. However, his conclusion remained that an assessment of damages and reasonable notice period amounted to a weighing of the evidence, which was outside the scope of a summary judgment application. As a result, Mr. Coffey's application was dismissed.

What does this mean for employers?

It is unclear at the time of writing whether or not this decision has been appealed. However, as the law stands presently, there now exists a split in the case law as to whether or not masters are entitled to assess reasonable notice periods on a summary judgment application. Generally speaking, this decision may serve to provide a powerful shield against former employees who seek to have their wrongful dismissal actions decided on an expedited basis. A trial (or alternatively, a summary trial, as suggested by Master Farrington as being a more appropriate summary procedure in these types of cases) are often much costlier and time-consuming than the summary judgment process. Former employees may not want to (or be able to) go through these more onerous trial processes, which may in turn help to spark reasonable settlement discussions earlier in the litigation process.

By

[Kamini Dowe](#)

Expertise

[Labour & Employment](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.