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

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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

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