Expanding the Meaning of Employer/Employee Relationships in the "Modern Workplace"

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In *TCF Ventures Corporation v. The Cambie,* 2016 BCSC 1521, the Supreme Court of British Columbia had to determine whether a unique contractual relationship between two corporations constituted an employer/employee relationship.

In April 2009, the plaintiff (through his personal corporation) began working for the defendant company as its CFO. During that time, his responsibilities and remuneration changed several times. At one point, he also took on a fundraising role where he received a commission of 4% of all capital that he raised towards the defendant's expansion ventures. Further adding to the unclear nature of the relationship between the parties, in September 2012, the plaintiff took on a consulting contract with a third-party client. By the end of October 2012, the relationship between the plaintiff and the defendant had deteriorated. The defendant terminated the contract and the plaintiff brought an action against the defendant alleging wrongful dismissal.

There were two main issues before the court. The first was whether the relationship between the plaintiff and defendant was one akin to an employer/employee relationship. The second was what notice, if any, the plaintiff was entitled to receive as a result of being terminated without cause.

The court acknowledged that there were "material differences" between the relationship between these parties and what one might characterize as a "traditional" employment relationship. For example, the plaintiff's role changed several times, there was no formal employment agreement between the parties, and the plaintiff took outside work from a third party while he was working with the defendant. The court noted, however, that employment law has evolved in order to recognize the "realities of the modern workplace." In the modern workplace, parties can come to a variety of different working arrangements, and the relationship between workers and those to whom they provide their services are "not simply binary." In other words, it is becoming increasingly difficult to define these types of relationships as either employer/employee relationships or that between a company and an independent contractor.

In determining whether the plaintiff was an employee, the court applied the non-exhaustive list of factors from the B.C. Court of Appeal decision of *Marbry Distributors Ltd. v. Avrecan Int. Inc.,* which included the duration and permanency of the

relationship; the degree of reliance and closeness of the relationship; and the degree of exclusivity. The court held that, despite the fact that the provision of services was through a corporation and that there was a lack of complete exclusivity, the nature of the relationship was akin to that of an employer/employee situation as opposed to purely independent.

Having determined that the plaintiff was an employee, the court then had to determine the amount of notice that he was entitled to receive from the defendant. The court determined that the appropriate amount of notice was nine months. When applied to the plaintiff's salary at the time of his termination ($75,000) and his commission, the total notice amounted to $131,250. However, the court deducted the plaintiff's earnings from his outside consulting job, reducing the total damage award to $107,893.33.

This decision is significant for two reasons. First, it highlights the risks companies face when characterizing a relationship as a contractual relationship when it is, in fact, more akin to an employment relationship. Second, it emphasizes that significant awards of reasonable notice can be given to short-term employees.

By

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