Summary Judgment May Not Be Appropriate for Determining Reasonable Notice

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Trials are too expensive for many litigants. Summary judgment is one way of resolving disputes without a trial. In Alberta, summary judgment is available at any time during the pre-trial process. The advantages of summary judgment are not only that it avoids a trial, but in many cases it also avoids the full expense and delay of pre-trial procedures. Based on a recent decision from the Court of Queen's Bench of Alberta, however, summary judgment may not be appropriate for determining reasonable notice in a wrongful dismissal case.

In a normal wrongful dismissal case where there is no allegation of cause for the termination of employment, the main issue to be determined is the amount of notice, or pay in lieu of notice, that the employee is entitled to. In most cases, the court will consider the classic factors that were set out in *Bardal v. Globe & Mail Ltd*., 1960 CanLII 294 (*Bardal*), as well as other factors depending on the circumstances of the particular case. In determining the reasonable notice, the court must decide which factors should be given greater weight depending on the particular case.

Background

In *Coffey v. Nine Energy Inc*., 2017 ABQB 417 (*Coffey*), the plaintiff sought summary judgment against his former employer. The defendant did not allege cause in his termination, but defended the action by disputing the appropriate notice period and the plaintiff's claim for compensation.

On appeal from a master's decision, Justice Nixon of the Court of Queen's Bench reviewed the leading authorities, such as *Bardal*, and determined that the assessment of "reasonable notice involves the weighing of evidence, and is not a simple mechanical application of legal principles to established facts" or a "simple computation". The Court concluded that an assessment of damages for pay in lieu of reasonable notice is not appropriate for summary judgment as it involves the determination of contentious issues of fact that requires the court to weigh evidence which is outside the scope of the summary judgment.

Takeaway

While summary judgment should be used when it is the proportionate, more expeditious, and less expensive procedure, summary judgment applications seeking an assessment of damages in wrongful dismissal cases will not likely be successful based on the decision in *Coffey*. However, there are other options available to the plaintiff to avoid a trial. The Court in *Coffey* held that a summary trial, rather than summary judgment, may be appropriate for determining reasonable notice as it allows the Court to weigh competing evidence and avoids an expensive full,*viva voce*trial.1

1 Note that the Court of Appeal of Alberta in *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49 recently clarified the test for summary judgment.

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