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Employee Can't Have Cake and Eat It Too: Court Strikes Employee's Claims for Lack of Jurisdiction

The BC Supreme Court recently struck out the majority of the plaintiff's claims on the grounds that the court lacked jurisdiction to adjudicate claims within the exclusive jurisdiction of the BC *Employment Standards Act* ("**ESA**")[1] and the BC *Human Rights Code* ("**Code**")[2]. The Court also struck out related claims for aggravated and punitive damages on the basis that they were not related to the defendant's conduct during the course of dismissal, which is required by law.

Background

In *Schulz v Beacon Roofing Supply Canada Company*[3] ("**Schulz**") the plaintiff employee commenced a wrongful dismissal action against the defendant employer, which included claims for payment for failure to provide reasonable notice, short term disability benefits, overtime pay pursuant to the ESA, claims for sexual harassment and discrimination contrary to the Code, and aggravated and punitive damages arising out of the manner in which the defendant dismissed the plaintiff.

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[1] *Employment Standards Act*, R.S.B.C. 1996, c. 113.

[2] *Human Rights Code*, R.S.B.C. 1996, c. 210.

[3] *Schulz v Beacon Roofing Supply Canada Company*, 2016 BCSC 1475.

The defendant made an application to strike the majority of the plaintiff's claims pursuant to the BC *Supreme Court Civil Rules* ("**SCCR**")[4] whereby a court can, at any stage of the proceeding, strike out the whole or any part of a claim on certain grounds, including the ground that it discloses no "reasonable" claim. Evidence is not admissible on an application to strike and claims will only be stuck if it is "plain and obvious", assuming the facts pleaded are true, that the pleading discloses no reasonable cause of action.

The defendant successfully demonstrated that the claims were not reasonable. The Court did not have jurisdiction to determine the plaintiff's claims under the ESA and the Code, as these claims were within the exclusive jurisdiction of each of the specific statutory bodies established to adjudicate such claims. The defendant also asserted that the claims for aggravated and punitive damages did not relate to the conduct of the defendant during the course of dismissal, and therefore should also be struck.

Decision

ESA

In support of striking the plaintiff's claim for entitlement under the ESA to overtime pay for hours worked over eight hours per day and/or 40 hours per week, the defendant relied on the BC Court of Appeal decision of *Macaraeg v E Care Contract Centers Ltd*.[5] In *Macaraeg*, the Court of Appeal found that the Director of Employment Standards had exclusive jurisdiction to determine claims for mandatory overtime pay, and therefore the plaintiff's claim could not be enforced in a civil action. The Court similarly concluded in *Schulz* that it was bound by the decision of the Court of Appeal and held that the plaintiff can only bring any claim for overtime within the time limits and procedures set out in the ESA.

[4] *Supreme Court Civil Rules*, B.C. Reg. 168/2009.

[5] *Macaraeg v E Care Contract Centers Ltd.*, 2008 BCCA 182.

Code

The Court also found that the plaintiff's claims for discrimination and sexual harassment must be brought before the BC Human Rights Tribunal ("**Tribunal**") and not in a civil claim. The Court followed *Bajwa v Veterinary Medical Association (British Columbia)*,[6] which held that the Code provides a statutory scheme that forecloses the possibility of a common law remedy for discrimination.

The plaintiff tried to maintain that the defendant's actions amounted to "tortious harassment"; however, the Court noted that the weight of judicial authority in British Columbia is against the development of such a tort, and furthermore the plaintiff did not meet the required elements of such a tort.

The Court therefore struck large parts of the plaintiff's claim relating to harassment and discrimination.

Aggravated and Punitive Damages

The law is clear that aggravated and punitive damages arise from the employer's conduct at the time of dismissal and not the employer's conduct before or after the dismissal.[7] In striking the plaintiff's claim for aggravated and punitive damages, the court concluded that there was nothing in the plaintiff's pleadings or submission to support that any of the defendant's conduct arose at the time of the dismissal, no causative relationship between the allegations and her termination was suggested, nor was there any suggestion that the defendant was dishonest or callous in the manner of dismissal.

Take away

Employees are well advised to remember that where there are statutory remedies available through non-court processes, that they will not be allowed to "have their cake and eat it too" by bringing

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[6] *Bajwa v Veterinary Medical Association (British Columbia)*, 2012 BCSC 878 at paragraph 138.

[7] *McKinley v BC Tel*, 2001 SCC 38.

claims in court that ought to have been pursued more appropriately elsewhere.

Likewise, in responding to civil claims by former employees, employers can limit their exposure and defeat statutory claims through an early application to strike out all, or parts of the employee's claim. Success on such an application to strike will limit the issues before the court, resulting in reduced time and expense at trial, and indeed may make the claim less than viable to pursue. Strategically, success on an application to strike can provide the conditions to successfully resolve the dispute without the need and expense for a full trial. This ultimately leaves more "cake" for all involved.

by Joan M. Young and Natalie Cuthill

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a cautionary note