BC Court Of Appeal Confirms "No Hire" Clause Not Intended To Injure Employees

In *Latifi v The TDL Group Corp.*, 2025 BCCA 45, (*Latifi*) the BC Court of Appeal upheld the summary dismissal of a proposed class action against the Tim Hortons franchisor in Canada. The underlying dispute between the plaintiff, a former Tim Hortons employee, and the defendant TDL Group, concerned a "no hire" or "no poach" clause contained in the license agreement governing Tim Hortons franchisees. The clause prevents franchisees from employing anyone from another Tim Hortons franchise without the written approval of the defendant.

The plaintiff alleged that the predominant purpose of the no-hire clause was to injure Tim Hortons employees, either by suppressing wages or by limiting mobility. In *Latifi*, the Court of Appeal found no errors in the chambers judge's ruling that, while the no-hire clause may have had the effect of suppressing wages, there was no evidence that suppressing wages was the intended effect of the clause; instead, the chambers' judge accepted the TDL Group's evidence that the valid commercial purpose of the policy was to protect the employer's investment in employee training. The Court concluded that there was no genuine issue for trial and upheld the decision to grant summary judgment.

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- *Latifi* contains a useful summary of predominant purpose conspiracy. The plaintiff has to prove that the predominant purpose of an agreement or concerted action between two or more persons, was to cause injury to the plaintiff, without any "just cause". Pursuit of business or other similar gain is a legitimate object and, in those circumstances, resulting damage is not recoverable.
- The plaintiff had first alleged (among other things) that the impugned clause violated the *Competition Act*, RSC 1985, C-34 by unlawfully suppressing class members' wages. Those claims were struck in November 2021—before the plaintiff's application for certification was heard—on the basis that the plaintiff's price-fixing claims did not apply to situations where the defendants are competing to purchase rather than supply the product in question (in this case labour).
- Bennett Jones' Employment Services group wrote recently on *Singh v Clark Builders*, 2025 ABKB 3, a case in which the Court of King's Bench of Alberta upheld a freely negotiated termination clause that limited the employee's notice entitlement to 90 days, despite the employee's promotion from Vice President to Chief Operating Officer.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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