Wrongful Dismissal + Streamlined Trials: A Year In Review



Alberta's streamlined trial rules aimed to simplify legal processes, but their applicability to wrongful dismissal cases has been limited over the past year. Key decisions—such as *Arsenault*, *Hou*, and *Bailey*—show that wrongful dismissal cases often involve factual disputes and complex issues unsuitable for expedited trials. Courts have emphasized the need for mutual agreement between parties to proceed with this approach. These rulings underline the importance of assessing the suitability of streamlined trials in wrongful dismissal actions, ensuring procedural strategies align with case specifics to avoid unnecessary complications.

It's been nearly a year since Alberta's *Rules of Court* were amended to repeal the summary trial process and replace it with the new "streamlined trial" rules. Prior to the introduction of the streamlined trial process, the Notice to the Profession and Public (NPP#2023-02) suggested that wrongful dismissal actions were well-suited to this new process. However, the early reported decisions from the Alberta Courts have not supported this conclusion.

Earlier this year, Field Law's Frank Molnar, KC successfully represented an employer in the first reported decision to consider the new streamlined trial rules: *Arsenault v Big Brock Brewery Limited Partnership* ("Arsenault"). Since then, two additional wrongful dismissal actions have sought to proceed on a streamlined trial basis: *Hou v Canadian North Inc.* ("Hou") and *Bailey v Northern Alberta Institute of Technology* ("Bailey"). So far, none of these wrongful dismissal matters have been deemed by the Court to be suitable for the new streamlined trial process. This begs the question: absent consent regarding suitability, should litigants engaged in wrongful dismissal lawsuits still consider pursuing a streamlined trial?

Challenges Faced by Wrongful Dismissal Litigants to Date

In *Arsenault*, the Court noted that the test for a streamlined trial is not whether the matter can be decided using a streamlined trial process. Instead, the Court must consider whether it is necessary to use a streamlined process to have the matter fairly and justly resolved. It must be clear to the judge hearing the application that using a streamlined trial will result in a more cost-effective process for the parties or a more efficient use of judicial resources.

Once the Court is satisfied that a streamlined trial is necessary pursuant to Rule 8.25(1)(a), it must then consider whether it would be proportionate to the importance and complexity of the issues, the amounts involved, and the resources allocated to the dispute pursuant to Rule 8.25(1)(b). In *Arsenault*, the employer raised the defence of just cause for dismissal, which required evidence through multiple witnesses and financial records. The Court concluded that the apparent complexity of the case made it unsuitable for the streamlined trial process based on these considerations.

In *Hou*, the Court added to *Arsenault's* interpretation of the necessity element of the test. The term "necessity" imports exclusivity, and the party applying for a streamlined process must demonstrate that this process is the only appropriate means of achieving a fair and just result. This sets a high bar that may be difficult for many applicants to achieve.

Further, the respondent employer in *Hou* submitted that the matter was "an incredibly fact-heavy case and those facts will go to the heart of the issues to be determined by the Court." The employer also anticipated calling 10 witnesses, including an expert witness, and argued that closing submissions would go well beyond the suggested 15-page limit due to the complexity of the issues. The Court found these factors supported that the case was unsuitable for a streamlined trial, and the application was ultimately dismissed.

Finally, in *Bailey*, the plaintiff employee sought a one-day streamlined trial for his wrongful dismissal action. The employer, resisting the application, argued that it would need 5–6 witnesses to provide affidavits to present the employer's version of events. Similar to *Arsenault*, the employer raised a just cause defence. While the Court appreciated the plaintiff employee's desire to achieve litigation economy, it emphasized that the defendant is equally entitled to advance its defence in the litigation. The employee's application for a streamlined trial was once again dismissed.

What Wrongful Dismissal Cases Could Fit the Streamlined Trial Mold?

While the cases above demonstrate the roadblocks that complex wrongful dismissal actions face when applying for a streamlined trial, they also provide some insight into what type of cases may be suitable. Absent a consensus between the parties regarding the suitability of the streamlined process and consent on the application for a streamlined trial, it appears that contested streamlined trials are more likely to be deemed appropriate in cases that are less fact-intensive, involve fewer witnesses to establish the evidentiary record, and have fewer complex issues in dispute. For wrongful dismissals, this may involve cases with straightforward facts where the dismissal is not contested and the primary issues are confined to the amount of severance owed or the enforceability of a contractual term, such as a termination clause.

A recurring theme we have seen so far is that employer-argued complexity often tips the scale against using a streamlined trial. While employers are entitled to exercise their right to a full defence, the high bar established for "necessity" and "only appropriate means of achieving a fair and just result" suggests that even moderate complexity can render a case unsuitable. Future cases may help clarify how Courts will balance the efficiency promised with the streamlined process and the complexity inherent in many wrongful dismissal cases. For now, wrongful dismissal claims involving factual disputes, credibility assessments, or technical defences continue to face hurdles accessing the streamlined trial process.

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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