You’re Hired! Oops, Take That Back, You’re Fired!

This proceeding arises from a dispute regarding the dismissal of the plaintiff …, as the Chief Administrative Officer (“CAO”) for the defendant, the City of Williams Lake (the “City”). Pursuant to the agreement reached by the parties, the commencement date of his employment was to be March 1, 2013. An unusual aspect of this case is that on February 27, 2013, prior to the commencement of Mr. DeGagne’s employment, the City terminated his contract of employment. (Emphasis added)

Madam Justice Dardi in *DeGagne v. City of Williams Lake* 2015 BCSC 816

What happened?

In this case, the employee was hired as a CAO of the City of Williams Lake and scheduled to start work on March 1, 2013. On February 27, 2013, the employer terminated his contract. In other words, the employee was fired before he ever started employment. Why? The termination letter said that the decision was a result of communications from the employee regarding a labour dispute that left council lacking “confidence that you will be able to exercise the sound judgment Council is looking for in its CAO”. What was the concerning communication? The employee had suggested a private meeting with the union president to establish trust and determine what it might take to resolve some outstanding issues between the City and the union. The Human Resource Manager, who received this email, was “concerned” about the proposed meeting and brought it to the attention of the Acting CAO who viewed this approach as “potentially very damaging to the ongoing negotiations” and felt that a one-on-one meeting with the union president could undermine the negotiation team.

That said, the court concluded that the City’s decision resulted, at least in

part, from the contents of an unsigned “anonymous letter” that the Mayor received after he issued a press release announcing the employee’s hire. That letter was “highly critical of Mr. DeGagne’s performance” as the CAO of another town.

At trial, the issue was whether the employee was entitled to damages for termination during the first year of employment under the Letter Agreement (six months), or, as the City argued, entitled to damages based on the termination during the probationary period language of the Letter Agreement (one month).

What did the Court do?

The court found that the employee was entitled to six months’ notice and rejected the City’s argument to pay based on the lower probationary clause saying:

I reject the City’s submission that because Mr. DeGagne had agreed to a one-month notice period during the probationary period he could not reasonably have anticipated that he would be entitled to a greater severance payment if the employment contract was terminated before he commenced employment. During any probationary period the employer is obliged to act in good faith in the assessment of a probationary employee’s suitability for the permanent position … I note that paragraph 3 of the Letter Agreement itself contemplates an informal review at three months, followed by a formal review in six months. In my view, it would be most unjust to impose a reduced obligation for severance without any corresponding obligation of the employer to assess in good faith Mr. DeGagne’s suitability for the position during an actual probationary period of employment.

What was the rationale for relying on the six months’ notice during the first year of the Letter Agreement? The court said:

In any case, I have concluded that on a plain and ordinary reading of Clause 8(C)(2) of the Letter Agreement, Mr. DeGagne is entitled to six months’ notice of termination, his employment having been terminated “during the first year of the Agreement”. (emphasis added) There is no ambiguity in the Clause. While it is unusual to be dismissed prior to having commenced work, in this case the specific term for six months’ notice applied during the first year of the agreement. I am satisfied, on reading the whole of the Letter Agreement, that Mr. DeGagne was entitled to six months’ notice, or pay in lieu, if his employment contract was terminated outside of the probationary period, and within one year from the date of the Letter Agreement, January 31, 2013.

The court went on to say that even if the Letter Agreement did not apply, the employee was entitled to reasonable notice of termination. The court noted that the employee was 57 years old, held a senior administrative position with a starting salary of $130,500, had more than 25 years of experience in similar positions, and that he and his partner had relocated to Williams Lake in anticipation of his new position. In those circumstances, the court found, he was entitled to reasonable notice of six months.

What does this mean for employers?

This is an unusual case. Rarely does an employer issue a contract of employment and terminate before the employee actually starts work. So, what should an employer do in such a situation? For starters, decisions to terminate before or after an employee commences work should not be made without full investigation of all circumstances.

How can liability be minimized in such situations? The first year of employment is typically the “testing” period of a new hire notwithstanding what is set forth in the probationary period. In some cases, issues may surface only after the probationary period ends.

Carefully consider whether the notice period you are offering in the first year of employment is a good business decision and one that you are willing to accept and pay should you need to terminate for any reason.

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