

CANADA / JUDGMENT

Wright v. Chilliwack Community Services

2000 BCSC 972

COURT

Supreme Court of British Columbia

DECIDED

8 June 2000

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2000 BCSC 972

Citation: Wright v. Chilliwack Community Services2000 BCSC 972

Date:

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Docket No.:

C994600

Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment

Mr. Justice Owen-Flood

Pronounced in Chambers

June 8, 2000

BETWEEN:

CATHERINE WRIGHT

PLAINTIFF

AND:

CHILLIWACK COMMUNITY SERVICES

DEFENDANT

Counsel for the Plaintiff: D.J. Jordon, Q.C.

and M.L. McBride

Counsel for the Defendant: C.C. Godwin

THE COURT:

General Background

- [1] The plaintiff sues the defendant for wrongful dismissal. The defendant concedes that the dismissal was made without cause. The sole issue is, what is the appropriate period of reasonable notice that should have been given by the defendant to the plaintiff.

The Findings of Fact

- [2] The facts I find to be the following: The plaintiff is a 56-year-old woman. In 1985, she graduated from McGill University with a Masters in Social Work. She has been working ever since, until her dismissal by the defendant on October 1 1998.
- [3] The defendant employed the plaintiff as its chief executive officer from March 1 1995 to October 1 1998; that is to say, for a period of 3 years and 7 months. Prior to her employment by the defendant the plaintiff had some 20 years of work experience, largely as a chief executive officer for voluntary social work agencies of a type analogous to the defendant.
- [4] The defendant employed the plaintiff after obtaining from her an assurance that if she was given the job as chief executive officer of the defendant, she would stay for some 7 to 10 years. The plaintiff gave that assurance. She was given the job.
- [5] The defendant is a social work agency that is, by and large, dependent upon government funds for its financing. As chief executive officer the plaintiff was responsible for some 80 salaried employees, plus a further 300 volunteers. She was responsible for managing a budget of some \$3.5 million or so. Also, she was responsible for fund raising from government, not only for carrying out the existing work of the defendant but also for planning for the future.
- [6] She was given the job by the defendant at an annual salary of \$50,000, with benefits equivalent to 15 1/2% of the salary, covering matters such as M.S.P., extended medical and dental benefits, long-term disability, life insurance, contribution to a group RRSP account, payroll deductions, four weeks vacation per year, and sick benefits.
- [7] I find she was peremptorily dismissed, with effect from the 1st of October 1998. That peremptory dismissal was accomplished by her being handed a letter signed by Mr. Robert Bessner, the chairman of the defendant's board of directors, dated the 30th of September 1998. That letter read, in its germane parts:

The Board of Directors at Chilliwack Community Services has decided to terminate your employment as of 1 October, 1998. To assist in your transition to new employment, the Board is prepared to provide you, on a without prejudice basis, with salary continuance for a period of five (5) months or until such time as you obtain alternate employment, whichever is sooner. ... We are also offering to engage at our cost (to a maximum of \$2500.00 plus applicable taxes) the services

of an out-placement agency which would assist in managing your transition to a new position. We would also be prepared you with a letter of reference.

The Board acknowledges, with gratitude, the contributions you have made to Chilliwack Community Services during your employment.

Sincerely,

J.R. Robert Bessner.

Chairman, CCS Board of Directors

The plaintiff, having been dismissed, then sought alternative employment pursuant to the letter of September 30, 1998.

[8] On December 1, 1998, the defendant issued a letter of reference to the plaintiff. In its pertinent parts the defendant's letter reads:

The Board of Directors of Chilliwack Community Services is pleased to provide this reference for Catherine Wright, who served as Executive Director ...

Chilliwack Community Services is a non-profit health and social services agency, governed by an elected volunteer board. It is located in the semi-rural Fraser Valley, east of Vancouver, Canada. This organization provides an array of community based services to individuals of all ages and to families. CCS employs eighty people and has an operating budget of approximately \$3.5 million. Staff and a large number of volunteers work from several regional locations including four primary ones.

As Executive Director, Ms. Wright represented CCS locally, provincially and federally. She was responsible for daily operations including personnel and finance, as well as long range strategic planning. Comprehensive personnel policies, a three-year strategic plan, and several community initiatives were the result of M.S. Wright's work with the organization. She provided written and oral reports to the Board of Directors which enabled that body to take effective action on a number of complex matters.

By this letter of reference, the Board of Directors of CCS recognizes Ms. Wright's skills and the level of commitment she brought to her work with this organization. In particular, her ability to form creative community partnerships will have a positive long-term impact for CCS.

We would recommend Catherine Wright for employment as an Executive Director or other responsible position in the health or social service sector.

[9] The plaintiff, amongst other things, employed a personnel placement agency, namely, Bernard Haldane Associates of Vancouver, British Columbia. In the period from her dismissal up to and including the 27th of March 2000 she applied for 33 positions, primarily, but not entirely, being positions for executive directors. As a result of those 33 applications she was short-listed for interview in 14 instances. Alas, notwithstanding her efforts, she was unsuccessful in all 33 applications. She has just recently secured a position as a casual social

worker with a health unit for this summer. In the result, it is conceded that failure to mitigate is not an issue in this case.

- [10] The legal issues resolve themselves into two parts, both concerning reasonable notice. First, what is reasonable notice in the ordinary sense of that term, as opposed to reasonable notice that is extended by virtue of aggravating factors, such as misconduct by an employer of the type contemplated by the Supreme Court of Canada per Iacobucci J. in *Wallace v. United Grain Growers* (1997), 152 D.L.R. (4th) 1.
- [11] The second issue is whether this is an appropriate case for not just reasonable notice in the ordinary sense of the term, but a reasonable notice that is extended beyond the ordinary sense because of the aggravating factors that the plaintiff argues have occurred in her case.
- [12] The first issue is reasonable notice in the ordinary sense of the term, as defined by McEachern, C.J.B.C., in *Ansari v. B.C. Hydro* (1986), 2 B.C.L.R. (2d) 33. There, at p. 40, McEachern C.J.B.C. identified the following non-exhaustive list of factors as being relevant for the determination of what constitutes a reasonable period of notice:

1. Length of service:
2. Age of the employee:
3. Type employment duties, and:
4. Availability of similar employment.

- [13] I also refer to the dicta of Iacobucci J. in *Machtinger v. HOJ Industries Ltd.* (1992), 91 D.L.R. (4th) 491 (S.C.C.). At page 504, Iacobucci J. quoted with approval from the judgment of McRuer, C.J.H.C., in *Bardal v. Globe & Mail Ltd.* (1960), 24 D.L.R. (2d) 140 (H.C.). At page 145, McRuer, C.J.H.C., wrote:

There can be no catalogue laid down as to what is reasonable notice in particular classes of cases. The reasonableness of the notice must be decided with reference to each particular case, having regard to the character of the employment, the length of service of the servant, the age of the servant and the availability of similar employment, having regard to the experience, training, and qualifications of the servant.

- [14] It goes without saying that a failure to provide adequate notice of termination will be the basis of an award for damages. The purposes of the damages are to put the employee in the position that he or she would have been in if the employee had been given proper notice. I also note that the obligation to give reasonable notice of termination as a rule cannot be satisfied simply by payment in lieu of notice on a monthly basis. (See *Iacobucci v. W.I.C. Radio Ltd.* 1999 BCCA 753.
- [15] Counsel for the defendant has cited 6 cases, including *Wallace v. United Grain Growers Ltd.* (supra). Counsel for the defendant has submitted that the appropriate range of reasonable notice would be something between 5 to 8 months at most. Counsel has cited two cases in

support of that. The first is *McRae v. Conference Board of Canada* (1993), 45 C.C.E.L. 29 (Ont. H.C.) There, the wrongfully dismissed 36-year-old man had been the director of public relations and marketing, this being a position he had held for some 6 years. On dismissing him, his employer gave him 3 months' salary in lieu of notice. The court substituted 6 months.

- [16] I agree with counsel for the plaintiff that that case is to be distinguished from the case at bar because the plaintiff *McRae* had a background and qualifications of significance in marketing and public relations. In the result I find he had a much broader range of job opportunities open to him, not just in the public sector, but, more importantly, in the private sector.
- [17] I find that the plaintiff at bar has a limited range of job opportunities open to her. Her experience is, for all intents and purposes, confined to top level positions in the field of social work as a chief executive officer with voluntary groups. There is almost no opportunity for her in the private sector. The *McRae* case is further to be distinguished from that at bar in that *McRae* was not at the apex of the managerial hierarchy but, rather, somewhat lower than the plaintiff was and has been in her career.
- [18] The second authority cited by the defendant is *Stewart v. Manitoba Opera Assn.* (1994), 2 C.C.E.L. (2d) 314 (Man. Q.B.) That case is also to be distinguished from the case at bar. *Stewart* had been employed by the Manitoba Opera Association for some 2 years and 5 months. He was given by the court 4 months' salary in lieu of reasonable notice. It is important to notice the distinguishing factor, namely, that while *Stewart* had been director of development, nevertheless he was a person who had some 17 years experience in marketing in the electronic industries prior to his switching to work for the non-profit opera society. In other words, the plaintiff *Stewart* had many more opportunities for re-employment open to him than does the plaintiff at bar.
- [19] The defendant also has referred to *Dreaver v. Saskatchewan Treaty Indian Woman's Council Inc.* (1994), 122 Sask. R. 172 (Q.B.). There, *Dreaver* had been hired as a project co-ordinator and executive director in 1988. She was dismissed in 1993, after working for 8 years for that employer, in 5 of which she had been the executive director. She was working at a salary of \$31,000.00 per year. The court awarded her 6 months' salary in lieu of notice. She had been hired under a contract for an indefinite term. The court observed that she was aware of the connection between funding and continued employment in that particular job. I find that factor is one that distinguishes the *Dreaver* case from the case at bar.
- [20] The defendant also relies on the decision of the Ontario Court of Appeal in *MacKinnon v. Lewis Energy Management Inc.* (1999), 45 C.C.E.L. (2d) 211 (Ont. C.A.). There, the respondent had been employed as a vice-president of marketing and sales. The plaintiff was given 4 months' salary in lieu of notice. The real issue in the Ontario Court of Appeal was whether the plaintiff had been forced to sell his home because of the failure to pay him the 4 months' salary in lieu of notice. It was held that the plaintiff in that case was not entitled to

succeed on that ground. Thus, that case is entirely distinguishable.

- [21] The fifth case relied on by the defendant is *Hall v. Canadian Corporate Management Co.* (1984), 4 C.C.E.L. 166 (Ont. C.A.). That is a case where the employee, a 51-year-old person, had worked for 11 months as the vice-president of marketing and merchandising. The trial judge awarded 12 months' salary in lieu of notice. The Court of Appeal reduced it to 6 months. That case is to be distinguished on its facts from the case at bar.
- [22] At bar, the plaintiff submits that the ordinary reasonable notice should be 12 months but that it should be increased by an additional period of 3 months because of a trinity of aggravating factors coming within the purview of those contemplated by Iacobucci J. in *Wallace v. United Grain Growers* (supra). In that regard, I refer to the dicta of Iacobucci J. in *Wallace v. United Grain Growers*, in paragraphs 84, 85, 98 and 107, where he observed:
84. Several cases have specifically examined the presence of a promise of job security: see e.g. *Makhija v. Lakefield Research* (1983), 14 C.C.E.L. 131 (Ont. H.C.), affirmed by the Ontario Court of Appeal (1986), 14 C.C.E.L. xxxi; *Mutch v. Norman Wade Co.* (1987), 17 B.C.L.R. (2d) 185 (S.C.). In particular, I note that the British Columbia Court of Appeal recently adopted this approach in *Robertson v. Weavexx Corp.* (1997), 25 C.C.E.L. (2d) 264. The facts of this case were very similar to those currently before this Court. Writing for the court, Goldie JA, stated at pp. 271-72:

Also part of the inducement to the respondent in making the move he did was, no doubt, the discussions as to long term employment. ... As I have concluded, those discussions lacked contractual force in terms of the respondent's assertion of a fixed term contract but nevertheless, they were and are, in my opinion, significant on the issue of reasonable notice.

85. In my opinion, such inducements are properly included among the considerations which tend to lengthen the amount of notice required. I concur with the comments of Christie et al., supra, and recognize that there is a need to safeguard the employee's reliance and expectation interests in inducement situations. I note, however, that not all inducements will carry equal weight when determining the appropriate period of notice. The significance of the inducement in question will vary with the circumstances of the particular case and its effect, if any, on the notice period is a matter best left to the discretion of the trial judge.

Paragraph 98:

98. The obligation of good faith and fair dealing is incapable of precise definition. However, at a minimum, I believe that in the course of dismissal employers ought to be candid, reasonable, honest and forthright with their employees and should refrain from engaging in conduct that is unfair or is in bad faith by being, for example, untruthful, misleading or unduly insensitive. ...

Paragraph 107:

107. In my view, there is no valid reason why the scope of compensable injuries in defamation situations should not be equally recognized in the context of wrongful dismissal from employment. The law should be mindful of the acute vulnerability of terminated employees and ensure their protection by encouraging proper conduct and preventing all injurious losses which might flow from acts of bad faith or unfair dealing on dismissal, both tangible and intangible. I note that there may be those who would say that this approach imposes an onerous obligation on employers. I would respond simply by saying that I fail to see how it can be onerous to treat people fairly, reasonably, and decently at a time of trauma and despair. In my view, the reasonable person would expect such treatment. So should the law.
- [23] Counsel for the plaintiff relies on that case, and also, insofar as ordinary reasonable notice is concerned, on the decision of McKinnon, J, of the Ontario Court of Justice (General Division) in *Simpson v. Consumers' Association of Canada*, [1999] O.J. No. 746. In that case, a 41-year-old chief executive officer of a non-profit organization, employed for 4 years, supervising some 7 to 12 employees, was given 12 months' salary in lieu of notice. McKinnon, J. observed that for persons in the position such as the plaintiff was in the Simpson case, namely, working as chief executive officer for a voluntary organization, new jobs do not grow on trees.
- [24] On this second issue, namely, that there should be an extended period of reasonable notice as opposed to what may be termed the ordinary customary period, because of aggravating factors the plaintiff relies on some three additional factors. First, Chilliwack and the area served by the defendant represents a small community, relatively speaking, and the dismissal of the plaintiff was accompanied by significant media coverage. That coverage went far beyond the community and I find that it made it more difficult for the plaintiff to obtain alternative employment. The social work voluntary organization community is in itself a small community where news travels fast, particularly when it concerns dismissal of a chief executive officer.
- [25] Second, the plaintiff relies on the fact that notwithstanding its written promise to pay up to \$2,500, plus taxes, to an employment placement bureau to help the plaintiff seek a job, on August 31 1999, when presented with such an account by the employment placement bureau consulted by the plaintiff, the defendant failed to pay any part of the account.
- [26] Those two factors, the publicity and the failure to honour the written promise, I find to be of some significance and material to the length of notice that should be given to this plaintiff.
- [27] The plaintiff urges a third factor, namely, the fact that Mr. Bessner, the president of the board of directors of the defendant, filed an affidavit on the 6th of June of this year for the purposes of this summary trial, in which he made allegations which the plaintiff's counsel characterizes as, in effect, tantamount to assassination of the plaintiff by innuendo. Plaintiff's counsel says that those allegations set out in paragraphs 6 and 9 of the Bessner affidavit imply that the plaintiff was an incompetent manager, unable to carry out her duties for the defendant. I find that while there is merit in plaintiff's counsel's characterization of

those paragraphs 6 to 9, nevertheless, the fact that those allegations were made in an affidavit filed in court on the 6th of June 2000 means that they have little, if any, effect. The reality is that the defendant has at no time pled justification for the dismissal. On top of that it is common ground, as the letter of dismissal and the letter of reference in the pleadings show, that there was no just cause whatever for the dismissal; that the plaintiff was indeed a good and able manager and chief executive officer. In the result, I attach no weight to the plaintiff's argument insofar as it pertains to the allegations in the Bessner affidavit.

[28] Bearing in mind all of the facts that I have related and, in particular, the difficulties that a person of the plaintiff's qualifications has found, and will find, in securing a similar job as a chief executive officer in a voluntary organization or its equivalent, I am satisfied that a more extended period of notice than I would ordinarily consider is to be awarded. In the result, I award the plaintiff 12 months salary in lieu of notice. She shall also have pre-judgment interest. From that 12 months salary in lieu of notice must be deducted the five months that she has already been paid.

[29] The plaintiff shall have her costs on Scale 3.

"D.D. Owen-Flood, J."

The Honourable Mr. Justice D.D. Owen-Flood

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