

Court of King's Bench of Alberta

Citation: Carleton v Kootenay Wood Transport Ltd, 2026 ABKB 497

Date: 20260707
Docket: 2101 03441
Registry: Calgary

Between:

Russell Carleton

Plaintiff

- and -

Kootenay Wood Transport Ltd

Defendant

**Reasons for Decision
of the
Honourable Applications Judge J.R. Farrington**

[1] This special chambers application was originally scheduled to be heard on April 9, 2026. The parties had a dispute over the timing of the provision of some of the materials, and in order to give a response time for the receiving party, I arranged for the matter to be heard on April 24, 2026. I am grateful to counsel for making that date work.

[2] This is an application for summary judgment in an employment law dismissal case. The plaintiff says that he was dismissed, constructively or otherwise, and that he is entitled to reasonable notice and punitive damages. The defendant employer says that the plaintiff resigned, and no compensation is owed.

[3] The background setting for the application is that the plaintiff was a driver for a trucking company. The plaintiff worked for the defendant as both an independent contractor and

employee for approximately nine years, and by all accounts he was a model driver. Recently before the events here, the plaintiff had received a driver of the year award.

[4] Shortly before Christmas in 2021, the plaintiff was assigned a load. It appears that weather forecasts were that there would likely be snow and difficult driving conditions on the trip. A dispute ensued between the plaintiff and the defendant as to whether the tires on the vehicle that he would be driving were safe enough for the trip. As is often the case in alleged constructive dismissal situations, there were background facts that influenced the approach and perspective of the parties to the dispute such as:

- In the previous year there was an accident of some significance within the employer company.
- In the not-too-distant past there was an accident suffered by a member of the plaintiff's family in difficult driving conditions.
- The defendant had a written policy with respect to tread depth as to when tires would be changed on vehicles. The parties differed on whether that policy mandated a change here.
- The defendant also had previously circulated communications to its drivers about safety being the most important thing, but there were disputes as to whether that was the case in actual practice or not.

[5] The defendant's position was that decisions about safety by drivers would always be supported, but that those decisions needed to be made on the road in the course of carrying out a load rather than in anticipation of difficulties and issues in the future.

[6] There is also evidence suggesting that the plaintiff may have made some alternate plans for Christmas, and that those plans may have had some bearing on the dispute and whether the plaintiff would take the load.

[7] In addition, it appears to me that there was another option here. If the plaintiff did not wish to take the load, or he felt it unsafe, he may have considered simply declining to do so, rather than cleaning out his truck as he did here. In the former case, he may have shifted the onus to the employer as to what it would do next. In the latter case, which is what was done here, it is hard not to conclude that there was likely a resignation. That is not to say that there still may not have been a constructive dismissal. All of that needs to be considered and explained by the parties in a setting which, in my view, includes an assessment of credibility, motivations and the choices made based upon *viva voce* evidence.

[8] The evidence submitted was the primary affidavit of the plaintiff, a primary affidavit of the principal of the employer defendant, Robert Page, and some cross examination.

[9] As I find that I must dismiss the summary judgment application, I am not prepared to make specific findings of fact on many of these issues. To do so would potentially undermine the process going forward.

[10] In ***Hryniak v Mauldin***, 2014 SCC 7, the Supreme Court of Canada reminded of the modern litigation context and the delays and costs inherent in lengthy litigation. ***Hryniak*** encouraged summary dispositions when they could be made based upon the record before the Court. At paragraphs 49 and 50, the Supreme Court of Canada held:

[49] There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[50] These principles are interconnected and all speak to whether summary judgment will provide a fair and just adjudication. When a summary judgment motion allows the judge to find the necessary facts and resolve the dispute, proceeding to trial would generally not be proportionate, timely or cost effective. Similarly, a process that does not give a judge confidence in her conclusions can never be the proportionate way to resolve a dispute. It bears reiterating that the standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute.

[11] Post **Hryniak**, for some time differences remained in the test for summary judgment in Alberta in the decisions of the Alberta Court of Appeal. One line of authority suggested that the standard of proof for summary judgment was that the moving party's case must be "unassailable." Another line suggested that the standard of proof was the normal standard of proof on a balance of probabilities. Pre **Hryniak**, the test was stated in various ways but it generally required meeting a relatively high bar for summary judgment.

[12] That issue was resolved in Alberta with **Weir-Jones Technical Services Incorporated v Purolator Courier Ltd**, 2019 ABCA 49. In **Weir Jones**, the Court of Appeal reminded of the principles in **Hryniak** and held among other things at paragraph 47:

[47] The proper approach to summary dispositions, based on the **Hryniak v Mauldin** test, should follow the core principles relating to summary dispositions, the standard of proof, the record, and fairness. The test must be predictable, consistent, and **fair to both parties**. The procedure and the outcome must be just, appropriate, and reasonable. The key considerations are:

- a) Having regard to the state of the record and the issues, is it possible to fairly resolve the dispute on a summary basis, or do uncertainties in the facts, the record or the law reveal a genuine issue requiring a trial?
- b) Has the moving party met the burden on it to show that there is either "no merit" or "no defence" and that there is no genuine issue requiring a trial? At a threshold level the facts of the case must be proven on a balance of probabilities or the application will fail, but mere establishment of the facts to that standard is not a proxy for summary adjudication.
- c) If the moving party has met its burden, the resisting party must put its best foot forward and demonstrate from the record that there is a genuine issue requiring a trial. This can occur by challenging the moving party's case, by identifying a positive

defence, by showing that a fair and just summary disposition is not realistic, or by otherwise demonstrating that there is a genuine issue requiring a trial. If there is a genuine issue requiring a trial, summary disposition is not available.

d) In any event, the presiding judge must be left with sufficient confidence in the state of the record such that he or she is prepared to exercise the judicial discretion to summarily resolve the dispute.

To repeat, the analysis does not have to proceed sequentially, or in any particular order. The presiding judge may determine, during any stage of the analysis, that summary adjudication is inappropriate or potentially unfair because the record is unsuitable, the issues are not amenable to summary disposition, a summary disposition may not lead to a “just result”, or there is a genuine issue requiring a trial.

(Emphasis added)

[13] Prior to **Weir Jones**, some debate had arisen as to whether wrongful dismissal cases were appropriate for summary judgment applications. They are inherently different from a loan case for example. The possible results and remedies are limited in loan cases. Either the money is owed or it is not, and it is usually for an obvious amount. There is a much larger assessment and contextual evaluation function in a wrongful dismissal action.

[14] In **Coffey v Nine Energy Canada Inc**, 2017 ABQB 417, I discussed the difference between summary judgment applications and summary trials, as they were then called, and reminded that they are not the same thing. That decision was affirmed on appeal by the Honourable Justice K. Nixon (**Coffey v Nine Energy Canada Inc**, 2018 ABQB 898).

[15] Examples that reach an opposite conclusion were cases such as **Kubersky v Pomeroy (Pomeroy Group)**, 2021 ABQB 173, which was a decision of Master Schlosser (as he then was).

[16] In what is now a very oft cited and learned decision on wrongful dismissal and summary judgment, the Honourable Justice Marion dealt with summary judgment in a wrongful dismissal context in **McDonald v Sproule Management GP Limited**, 2023 ABKB 587.

[17] Standard summary judgment principles lead to the result here that I must dismiss the application for summary judgment. While I must assume that each party has put their best foot forward, I am left with questions that will require *viva voce* evidence.

[18] The issue of refusing work on safety grounds, as pointed out in the defendant’s brief, has both objective and subjective tests. Each must be considered as part of the analysis. Here, I do not think that can be done without *viva voce* evidence. The Court must consider the entirety of the situation and the various influences on the parties in terms of their decision-making and how they affected the result and the choices made. Whether or not there was a dismissal or a constructive dismissal is squarely in issue. In addition, while both parties gave their views on the issue of the tires and their safety, no expert evidence is proffered from other lay witnesses or experts without a stake in the proceeding. In addition, punitive damages are claimed, and that requires a very close examination of the parties and their behaviour. All of that leads to the inevitable conclusion, in my view, that the only fair way to resolve this dispute is with a trial of some sort, be it a traditional trial or a streamlined trial with limited *viva voce* evidence.

[19] We recall that the leading summary judgment authorities require a fair process before summary judgment is granted.

[20] Here, and in cases like this, a summary judgment application is made by the plaintiff. The defendant did not make a cross application for summary dismissal, and that is understandable. For example, it may not have wanted to expose itself to a possible costs award if such an application were unsuccessful or perhaps undermine its position that summary judgment is not appropriate for the nature of the dispute.

[21] This case illustrates the types of difficulties that can sometimes arise when a close case is pursued by summary judgment rather than in a decisive trial format. It is an asymmetric remedy. The moving party can win the case on the summary judgment application, but it cannot lose the case unless something such as the principles in *Pyrrha Design Inc v Plum and Posey Inc*, 2016 ABCA 12, are applied. *Pyrrha Design* was a case with very specific facts, and the principle was understandably applied based upon those facts, but the Court cannot assume an implied cross application for summary determination by the responding party in every case. It creates too much uncertainty and potential unfairness in development of the evidentiary record if the parties do not know definitively whether an issue (such as the constructive dismissal issue) will be determined definitively one way or the other in the procedure.

[22] This is a difficult case with significant importance to both parties and it needs to be resolved based upon the applicable legal principles and procedures in some form of a trial. Respectfully, whether we call it a failure by the plaintiff to meet the burden of proof on an applicant, or a lack of confidence in the record, we are saying for the most part the same thing.

[23] In this case, in my view it would not be a fair way to resolve the dispute if I only have the ability to find in favour of one of the parties as part of the process. Using the summary judgment tool chosen by the plaintiff, I cannot find in favour of the defendant on a close and disputed liability issue if I was inclined to do so. I simply make these comments to observe that the asymmetric nature of summary judgment, as opposed to a trial process (streamlined or otherwise) which decides issues once and for all in favour of either party may render potential unfairness in very close cases on disputed liability issues. We recall that the major summary judgment cases, above all, require a fair process. In addition, and anecdotally, we often see that summary judgment on very close issues can also lead to appeals at multiple levels which in the end sometimes leaves the parties behind where they would have been temporally if they simply proceeded to a trial with well focussed issues.

[24] Respectfully, whether summary judgment is appropriate for a particular case, of course depends on the issue(s) involved. A recent example is *1880499 Alberta Ltd v Warwick & Kent (Canada) GP Ltd*, 2026 ABCA 119, where one issue was found to be appropriate for summary judgment (a written contract issue which was appropriate for summary judgment and the remedy issue which was not). Here, the issue that requires deeper analysis and nuance in evidence in the evidence is the liability issue.

[25] In the end, I dismiss the application for summary judgment. The defendant is presumptively entitled to costs but if there are any issues or facts which might affect such a determination the parties are at liberty to speak to costs at the end of one of my morning chambers lists within four months of release of these reasons.

[26] Thank you to counsel and the parties for their cooperation with each other, and for the very helpful submissions which they made.

Heard on the 24th day of April, 2026.

Dated at the City of Calgary, Alberta this 7th day of July, 2026.

J.R. Farrington
A.J.C.K.B.A.

Appearances:

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