

No Hire? No Problem! British Columbia Court of Appeal Further Rejects Franchise-Related 'No Poaching' Class Action Against Tim Hortons

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The Court of Appeal for British Columbia (the Court of Appeal) has upheld the summary dismissal of a proposed class proceeding commenced by a former Tim Hortons employee, Samir Latifi (the Appellant), against the TDL Group Corp (TDL), the ultimate owner of the Tim Hortons franchise system. Latifi had alleged that TDL had committed a conspiracy to injure the class employees of Tim Hortons franchisees.

Specifically, the proposed class proceeding was primarily concerned with a no-hire clause in the standard franchise agreement, which prevents franchisees from employing or seeking to employ anyone from another Tim Hortons franchise without TDL's approval. The Court of Appeal declined to overturn the lower court's determination that the existence of the no-hire clause was not a breach of competition legislation.

Litigation History

The Appellant alleged that by requiring the franchisees to enter into contracts containing the no-hire clause, TDL conspired with franchisors to fix or control the price for the supply of labour, which constituted an unlawful means conspiracy in breach of the *Competition Act*.¹ Below, the chambers judge dismissed the claim in part, finding that the applicable provision only applies where competitors act in concert to affect "the supply" or "the production of supply" of the product, and does not apply to purchasing agreements.²

The Appellant amended his pleading to focus on the tort of a predominant purpose conspiracy. He alleged TDL and its co-conspirators' actions had the "predominant purpose" of causing injury to the plaintiff and class members through wage suppression, and that the no-hire clause was intended to cause the wage suppression.³

Below, the chambers judge dismissed the Appellant's claim and found that the affidavit evidence that TDL adduced on the motion demonstrated that the no-hire clause had a valid commercial purpose – namely, to benefit franchisees by providing them with assurance that after spending time and resources to train an employee, another franchisee could not immediately solicit the employee without TDL's approval. The chambers judge further found that the Appellant had failed to adduce sufficient evidence to prove that the clause was intended to injure employees, nor could he demonstrate that TDL had conspired with that

purpose in mind. Cassels' summary of the chambers judge's decision can be found [here](#).⁴

The Court of Appeal's Reasons

On appeal, the Appellant argued that the chambers judge had erred by:

- mischaracterizing the injury;
- inferring that the Vice-President of TDL who had provided the affidavit evidence regarding the predominate purpose of the no-hire clause, had personal knowledge of TDL's intent before he began working for TDL;
- mischaracterizing TDL's evidence more generally;
- inappropriately relying on certain case law as a "statement of settled law" that a person acting out of pure self-interest cannot be said to be conspiring (whereas in his submission, that case law was more nuanced and "far from clear");⁵ and
- finding there was no evidence of a conspiracy.

The Appellant submitted that the first and fourth alleged errors were reviewable for correctness, with the remainder reviewable for palpable and overriding errors.⁶

The Court of Appeal confirmed that the three constituent elements of a predominant purpose conspiracy are:

- an agreement or concerted action between two or more persons;
- with the predominant purpose of causing injury to the plaintiff; and
- overt acts committed that cause damage to the plaintiff.⁷

The Court of Appeal dismissed the Appellant's submission that the chambers judge misconstrued his argument that TDL intended to harm employees by limiting their employment mobility. Rather, it found that the chambers judge had considered this argument but determined that while this may have been the effect of the no-hire clause, it was not TDL's intent.⁸

Next, the Court of Appeal upheld the chambers judge's finding that TDL's affiant was a credible and competent witness for TDL, even though he joined TDL after the implementation of the no-hire clause.⁹ The Appellant had argued that the parties to the license agreement entered into an actionable conspiracy because they intended to limit worker mobility, which is not a legitimate objective. The Court of Appeal dismissed this argument, noting that it confused the result with the objective and was a veiled attempt to resurrect the dismissed unlawful means conspiracy, which was struck out in the first instance decision, and did not disclose a palpable and overriding error as alleged.¹⁰

Cassels

Regarding the Appellant's argument that TDL's reliance on existing case (namely the decision in *Cement Lafarge*) was misplaced, the Court of Appeal disagreed with the Appellant's description of TDL's position and the chambers judge's holding on this issue. While the Appellant claimed that TDL had advanced the argument if an actor acts purely out of self-interest, it cannot be found to have committed a conspiracy, the Court of Appeal found that TDL had properly focused its submissions on the intent underlying the alleged conspiracy, rather than the effect.¹¹ As a result, the chambers judge's determination of this issue disclosed no error.

Finally, the Court of Appeal saw no reason to interfere with the chambers judge's conclusion that there was no genuine issue for trial with respect to the alleged predominant purpose conspiracy.¹²

Takeaway

This decision is a positive development for franchisors whose franchise agreements include provisions that may restrict franchisee's employees, so long as the evidence supports a valid purpose rather than an intent to restrict competition. Care should be taken to understand no-poaching and other restrictions under the *Competition Act* to ensure that any agreements properly account for risk of liability under those provisions; however, a valid (and provable) purpose will likely protect franchisors from liability.

¹ RSC 1985, c C-34 (specifically, Part VI, s. 45).

² *Latifi v The TDL Group Corp.*, [2025 BCCA 45](#) (Court of Appeal Decision) at paras 9-19.

³ *Ibid* at paras 20-24.

⁴ *Ibid* at paras 25-39.

⁵ *Cement LaFarge v B.C. Lightweight Aggregate*, [1983 CanLII 23](#) [*Cement LaFarge*].

⁶ *Ibid* at paras 40-41.

⁷ *Watson v Bank of America Corporation*, [2015 BCCA 362](#) at para 44.

⁸ Court of Appeal Decision at paras 52-58.

⁹ *Ibid* at paras 59-61.

¹⁰ *Ibid* at paras 62-69.

¹¹ *Ibid* at paras 70-74.

¹² *Ibid* at paras 75-76.