IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *LaPlume v. AAA Internet Publishing Inc.,* 2025 BCSC 2139

Date: 20251017
Docket: S138693
Registry: Kelowna

Between

Kievs LaPlume

Plaintiff

And

AAA Internet Publishing Inc. dba WTFast

Defendant

Before: The Honourable Justice Ahmad

Oral Reasons for Judgment

Counsel for the Plaintiff:	S.D. Chambers
Counsel for the Defendant:	C. MacLeod
Place and Date of Hearing:	Kelowna, B.C. September 23, 2025
Place and Date of Judgment:	Kelowna, B.C. October 17, 2025

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I. Introduction

[1] On July 12, 2023, the plaintiff, Kievs LaPlume was dismissed from his employment with AAA Internet Publishing Inc. dba WTFast after 9 ½ years of employment.

[2] Mr. LaPlume was not terminated for cause and there is no dispute that he was entitled to notice, or payment in lieu of notice, for his dismissal. He was paid 16 weeks' salary on the termination of his employment, the amount that was expressly contemplated by the termination clause in his employment contract.

[3] Mr. LaPlume argues that the significant changes in the terms and conditions of his employment during the 9 ½ years he worked for the defendant, rendered the employment contract, including the termination clause, unenforceable by the time of the termination of his employment. Accordingly, Mr. LaPlume argues that he is entitled to reasonable notice under the common law.

[4] On this summary trial application, he seeks damages against the defendant in the amount of pay in lieu for that common law notice.

II. Background

[5] The defendant is a tech company operating in Kelowna, British Columbia that provides a network optimization tool for online multiplayer video games. At the time that it started its business operations in 2009, the defendant had two employees and two remote contractors. It currently has approximately 48 employees, comprised mainly of software developers, customer care agents, and game testers.

[6] On September 11, 2013, Mr. LaPlume entered into an agreement to provide services to the defendant as an independent contractor on a month-to-month basis. At the time, Mr. LaPlume was a recent graduate and had very little experience in software development. Accordingly, he was initially retained as a consultant primarily to provide support in games testing.

[7] By December 2, 2013, the defendant agreed to employ Mr. LaPlume as a junior developer. According to Robert Bartlett, the CEO and founder of the defendant, as junior developer, Mr. LaPlume was primarily responsible for testing games and writing configuration files for the defendant's network service to work on particular games.

[8] As set out in the written employment contract, as junior developer, Mr. LaPlume's duties and responsibilities were:

> Various research & development projects and tasks to support the WTFast client / server software and infrastructure.

[9] He was initially paid an annual base salary of $42,000, for which he was required to work 100% of regular office hours, plus overtime as may be necessary, for which he was to be paid $30 per hour. Mr. LaPlume reported to Mr. Bartlett.

[10] Other notable provisions of the employment contract include:

a) At para. 3:

> During your employment, the Company may change your position, title, duties, responsibilities or reporting relationship as it deems appropriate from time to time, consistent with your qualifications, skills and experience, and such change will not constitute a breach of this [employment contract] or a constructive dismissal, as long a such changes do not materially increase work duties or hours of work;

b) At paras. 19, 20, and 22, the termination clause provided that the defendant could terminate the employment at any time without cause, in full satisfaction, by providing notice, or pay in lieu of notice as follows:

   i. Two weeks' notice if the employment was terminated before 12 months' of continuous employment; plus

   ii. After 12 months' of continuous employment, an additional two weeks' notice per year of service to a maximum of 16 weeks' notice.

[11] Over the years, Mr. LaPlume received what Mr. Bartlett refers to as "incremental salary increases", as did other of the defendants' employees.

Mr. LaPlume received five salary increases in the first six years of his employment as follows:

a) November 2015 his salary increased to $48,000 per year;

b) April 2016 his salary increased to $52,000 per year;

c) November 2016 his salary increased to $55,000 per year;

d) January 2019 his salary increased to $58,000 per year;

e) September 2019 his salary increased to $65,000 per year.

[12] There is no evidence that any of the salary increases were accompanied by a promotion, or other change in his duties and responsibilities as a junior developer.

[13] That changed in January 2021 when the defendant changed its organizational structure and created six teams, each of which required a manager. Six employees then became managers; Mr. LaPlume was appointed as manager of the games team. With that change, Mr. LaPlume received a $6,000 salary increase from the $65,000 he earned in September 2019 to $71,000 per year.

[14] As manager of the games team, Mr. LaPlume was responsible for a “small team of new hires and support representatives”. However, he maintained his previous responsibilities for testing games and writing configuration files and his hours and location of work stayed the same. As manager, Mr. LaPlume continued to report to Mr. Bartlett.

[15] In 2022, Mr. LaPlume moved to the position of operations manager. At the time, Mr. LaPlume’s salary increased from the $71,000 he was earning as the manager of the games team to $80,000 per year.

[16] As the operations manager, Mr. LaPlume was responsible for helping new hires learn how to do game configurations. However, he continued to work with the games team testing games and writing configuration files for the defendant’s

network service to work on particular games. His hours and location of work stayed the same and he continued to report to Mr. Bartlett.

[17] At no time, including in January 2021 or in 2022, did the parties amend or replace the employment contract entered into at the commencement of Mr. LaPlume's employment in 2013.

[18] On July 12, 2023, the defendant terminated Mr. LaPlume's employment without cause.

[19] On his termination, the defendant paid Mr. LaPlume $24,616.44, representing 16 weeks' pay in lieu of reasonable notice as contemplated by para. 19 of the employment contract.

III. Issues

[20] As a preliminary issue, I must consider whether this matter is suitable for determination by summary trial.

[21] The substantive issues to be determined are, generally speaking, two-fold:

a) is the employment contract and, specifically, the termination clause, unenforceable; and

b) if so, what common law notice is Mr. LaPlume entitled to?

IV. Discussion and Analysis

A. Is this matter suitable for determination by summary trial?

[22] The plaintiff has brought this application pursuant to the *Supreme Court Civil Rules*, B.C. Reg. 169/2009, R. 9-7 which provides for determination by way of summary trial. The defendant agrees that it is appropriate to do so. I also agree.

[23] This case concerns the validity of a written employment contract, the analysis of which is not complex. None of the facts are in dispute and credibility is not a factor. Those facts, particularly when combined with the amount in dispute

(approximately $30,000) relative to the cost of a full trial, the straight-forward nature of the dispute, and the need of the parties to put their financial and business affairs in order, make this matter particularly suitable for summary trial: *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202, 36 C.P.C. (2d) 199 at para. 48; *Gichuru v. Pallai*, 2013 BCCA 60 at para. 31.

B. Is the employment contract unenforceable?

1. Positions of the parties

[24] Mr. LaPlume was hired as a junior developer, the position he had when the employment contract was signed. At the time of his dismissal, he was employed as an operations manager. He argues that the employment contract does not reflect the "significantly higher level role of operations manager", a position he describes as a "managerial role earning double that of a junior developer and having significantly more responsibilities."

[25] Relying on the decision of this Court in *Schmidt v. AMEC Earth and Environmental*, 2004 BCSC 1012 and other cases referred to therein, Mr. LaPlume argues that changes in his employment from 2013 to 2023 were so significant that they rendered the employment contract, including the termination clause, unenforceable. As the Court held at para. 10 of *Schmidt*:

> Significant changes in employment can render an employment contract unenforceable by the time of termination of employment. The substratum of the employment contract entered into at the time of hiring may have disappeared by the time of termination, or it may be implied that the contract could not have been intended to apply to the position ultimately occupied by the time of termination: [citations omitted.]

[26] While the defendant acknowledges that there were changes to Mr. LaPlume's employment, it argues that those changes were not so fundamental or dramatic to alter or erode the substratum of the employment contract. It describes the changes as "incremental and predictable" and consistent with his experience. The defendant says para. 3 of the employment contract expressly contemplates that such changes may occur without constituting a breach of the employment contract.

[27] The questions to be determined on this analysis are: (a) the degree of change required to constitute the erosion of the substratum of the contract; (b) the degree of the changes to the terms of employment in this case, and (c) in any event, were the changes contemplated or allowed under the employment contract?

2. Legal Framework

[28] Regarding the first question, Mr. LaPlume does not argue that any change in the employment contract is sufficient to erode the substratum. Rather, as the Court referenced at para.10 of *Schmidt,* the change must be "significant".

[29] In that case, Mr. Schmidt commenced his employment in 1975 as a geotechnical engineer. When his employment was terminated some 26 years later, he was managing a total of 10 offices across British Columbia, which had gross revenues in excess of $8 million. By that time, Mr. Schmidt was spending 90% or more of his time on management and administrative duties, rather than billable engineering work.

[30] The Court concluded that the changes in Mr. Schmidt's positions were "neither small nor inconsequential" and that he "received significant promotions with increased responsibility": *Schmidt* at para. 31. It noted:

> [34] The employer made changes to every aspect of the employment relationship, all without regard to the Agreement. Among other things, there were changes to title, responsibilities, duties, reporting relationships, salary and location of employment…

[31] In those circumstances, the Court concluded at para. 36 that "the substratum of the [employment] [a]greement…had completely disappeared and it can be inferred that the [employment] [a]greement was never intended to apply to the circumstances that existed at termination."

[32] Referring to the decision in *Schmidt* and *Dolden v. Clarke Simpkins Ltd.* [1983] B.C.J. No. 1342 (S.C.) 3 C.C.E.L., a decision referred to in *Schmidt*, in *Wernicke v. Altrom Canada Corp.,* 2009 BCSC 1533, Justice Adair expressly considered the "magnitude of change necessary to support a finding that the

substratum of an employment contract has eroded to the extent that termination provisions are no longer enforceable." As Justice Adair describes in *Wernicke* at para. 66, in *Dolden* "the plaintiff went from a part-time assistant earning a modest wage to a business manager earning commissions more than five times her staring salary." That magnitude of change was sufficient for the Court to conclude that the termination provisions in the employment agreement could not be enforced against Ms. Dolden.

[33] Justice Adair described the decision in *Schmidt* as follows:

> [66] …Similarly, in *Schmidt*, Madam Justice Gerow concluded (at para. 16) that the plaintiff's position changed "dramatically" from the time he signed the employment agreement until he was terminated. She observed (at para. 21) that, while the nature of the plaintiff's employment changed "dramatically," the nature of the defendant's business was also changing "radically."…

[34] And at para. 67, she notes:

> The comments of Mr. Justice Robins (for the majority) in *Wallace*, at pp. 180-181 are to the same effect, that <u>dramatic, fundamental change is required</u>:
>
> > Certainly, there are readily imaginable cases where an employee's level of responsibility and corresponding status has escalated so significantly during his period of employment that it can be concluded that the substratum of an employment contract entered into at the time of his original hiring has disappeared or it can be implied that that contract could not have been intended to apply to the position in the company ultimately occupied by him.
> >
> > [Emphasis added.]

[35] Other decisions relied on by the Court in *Schmidt* use similar language. In *Sawko v. Foseco Canada Ltd*. (1987), 15 C.C.E.L. 309 (Ont. Dist. Ct.), 1987 CarswellOnt 887, the Court found that there had been a "dramatic change" in the plaintiff's position since the employment contract was entered into. In *Irrcher v. MI Developments Inc*., 2002 CarswellOnt 5590 (Ont. Sup. Ct.), [2002] O.J. No. 5960 aff'd 2003 CanLII 27685 (O.N.C.A.) a finding that the employee's "responsibilities were dramatically greater, his remuneration was much greater, his method of remuneration had changed and his title had changed" was sufficient to support a

finding that the substratum of the written employment contract had disappeared. In that case, the Court found that "[i]t was simply not the same job."

[36] By contrast, "incremental changes in the terms of employment are unexceptional and unsurprising and the substratum of the employment contract cannot be removed by anything short of fundamental change.": *Wernicke* at para. 66, citing *Schmidt* at para. 29. Put another way, incremental changes in the terms of employment are an insufficient basis on which to conclude that an employment contract is unenforceable.

[37] In *Wernicke*, the Court found that the changes in Mr. Wernicke's employment were "incremental and predictable", not of the "magnitude found in either *Dolden* or *Schmidt",* and "not so dramatic or fundamental so as to erode or extinguish the substratum of the [employment contract]":at paras. 69–70.

[38] In addition to the magnitude of changes, however, it was also significant in *Wernicke* that that parties had expressly contemplated the types of changes made to the employment. In that case, the employment contract contained the following provisions:

> The employer "reserve[s] the right to require you to assume additional new and varied duties and responsibilities in the capacity of Controller or to alter your reporting relationships in the future…You agree that changed which may occur pursuant to this paragraph will not affect or change any other part of this agreement.";
>
> and
>
> "Any increase in your remuneration once accepted by you will not affect the application of this agreement."

[39] Presumably based on those provisions, the Court concluded that the changes in Mr. Wernicke's employment:

> [69] … were consistent with Mr. Wernicke's expectations when he accepted employment in May 1997. Both parties expected Mr. Wernicke's role with the company to evolve, and it did. Both parties expected that the Letter Agreement would remain effective despite that evolution.

[40] Indeed, in enforcing the termination clause in *Strench v. Canem Systems Ltd,* 2005 BCSC 1736 at para. 67, this Court expressly distinguished the decision in *Schmidt* based on the absence of a clause "expressly anticipating and permitting changes to be made to the [c]ontract in the future."

[41] In fact, the Court in *Schmidt* expressly referred to the fact that no such provision was included in Mr. Schmidt's contract:

> [33] The terms of the Agreement support the conclusion that the substratum has disappeared. The Agreement employs Mr. Schmidt as a senior engineer and no clause in the Agreement attempts to extend the applicability of the Agreement to any other employment relationship that might be established in the future. There was no clause stating that the provisions of the Agreement continue to apply notwithstanding changes in the Engineer's duties and responsibilities.

[42] Collectively, these cases provide the following:

a) Significant changes in employment can render an employment contract unenforceable by the time of termination of employment where: (a) The substratum of the employment contract entered into at the time of hiring may have disappeared by the time of termination, or (b) it may be implied that the contract could not have been intended to apply to the position ultimately occupied by the time of termination;

b) However, not all changes in employment benefits, duties, and responsibilities are sufficient to erode the substratum of an employment contract;

c) To erode the substratum of an employment contract, a change must be dramatic and fundamental; incremental and predictable changes in the terms of employment are an insufficient basis on which to conclude that an employment contract is unenforceable; and

d) Where an employment contract anticipates and permits changes in employment, the change required to erode the substratum of the contract must be beyond what was anticipated and permitted.

3. Analysis

[43] Despite Mr. LaPlume's bare assertion that he was "promoted numerous times throughout [his] 9 ½ years with the defendant", the evidence discloses that his position only changed twice: once when he became manager of the games team in January 2021 and the other when he became operations manager in 2022.

[44] While he received salary increases between the commencement of his employment in 2013 and January 2021, there is nothing to suggest that those increases, of varying amounts, were tied in any way to a change in job duties or responsibilities. With no evidence to the contrary, I cannot conclude those salary increases were anything other than the normal incremental salary increases that one would expect and that many of the defendant's employees received.

[45] The question is whether the change in Mr. LaPlume's duties and responsibilities after January 2021 amounted to a fundamental and dramatic change to erode the substratum of the employment contract.

[46] As a starting point, I accept that the changes in Mr. LaPlume's employment led to an increase in his duties and responsibilities: from having no responsibility over others, to having responsibility over "a small team of new hires and support representatives" in 2021, to "helping new hires learn how to do game configurations" in 2022.

[47] However, with no further evidence as to what specific duties and responsibilities were associated with those new positions, it is difficult to make any conclusion regarding the magnitude of the changes.

[48] Moreover, even accepting that Mr. LaPlume's new positions included added responsibilities, it is also significant that, with the exception of his salary, all other aspects of his employment as a junior developer remained the same. He continued to work with the games team testing games and writing configuration files, he continued to report to Mr. Bartlett, and his hours and location of work stayed the

same. Simply put, other than his responsibility for “new hires”, neither his core job duties, nor his status as a developer changed.

[49] Indeed, the salary increases of $6,000 and $9,000 that accompanied the two changes in his position were approximately the same as the $7,000 increase he obtained between January and September 2019, with no change in responsibility. In my view, that is some indication of the minimal impact of the increased responsibility.

[50] In any event, I am satisfied that the changes in Mr. LaPlume’s employment were not the dramatic, fundamental, or significant changes referred to in the case authorities. Notably, in each of the cases referred to by Mr. LaPlume, the change resulted in the employee assuming either significantly greater responsibilities or, as the Court concluded in *Irrcher*, “[i]t was simply not the same job.”

[51] For example:

a) In *Schmidt,* the plaintiff commenced his employment as a geotechnical engineer and ended in a significant management role, responsible for managing 10 offices across British Columbia with gross revenues in excess of $8 million.

b) At the beginning of employment in *Sawko*, the plaintiff held the position of foundry product engineer and was responsible for laboratory work and engineering work. Three years later, his duties were expanded to assisting with sales and marketing in southern Ontario. Eventually, he became responsible for the day-to-day operations of the northern part of the company’s activities, centred in Sault Ste. Marie.

c) In *Dolden*, the plaintiff commenced her employment as an assistant to the business manager. By the end of her employment, she was employed as a business manager and was responsible for closing sales deals, arranging financing, and handling purchase monies.

[52] As the case law demonstrates, I accept that significant managerial responsibility may be a sufficient basis on which to conclude that the substratum of an employment contract has been eroded. I also accept that, at some point, added supervisory responsibility may have that effect. However, in my view, the changes in Mr. LaPlume's employment were not of the same magnitude as the demonstrably significant and greater responsibilities evidenced in the cases I have referred to above.

[53] Rather, especially given that his core role as a developer remained the same, in my view, the changes in Mr. LaPlume's employment are better described as "incremental". As he gained experience in that role, his overseeing other lesser experienced employees performing the same function is not surprising; it is predictable. Such changes in the terms of employment are an insufficient basis on which to conclude that an employment contract is unenforceable.

[54] It is also significant that, as was the case in *Wernicke* and *Strench*, the changes were consistent with Mr. LaPlume's expectation when he signed the employment contract. Specifically, pursuant to para. 3, both he and the defendant expected Mr. LaPlume's role to evolve with his qualifications, skills, and experience. That is exactly what happened: as he gained more experience and skill as a developer, his role evolved to overseeing less experienced developers. Paragraph 3 expressly reflects that both parties expected that the employment contract would remain effective notwithstanding those changes.

[55] In my view, the inclusion of para. 3 in the employment contract serves to reinforce the conclusion that the incremental and predictable changes to Mr. LaPlume's employment are insufficient to render the termination clause of the contract unenforceable.

[56] It follows that Mr. LaPlume is bound by the termination clause. The defendant has met its obligation to Mr. LaPlume pursuant to its terms.

C. What is the appropriate common law notice?

[57] In light of the above conclusion, it is not necessary for me to determine the issue of reasonable notice.

V. Conclusion

[58] Mr. LaPlume's application is dismissed.

[59] Costs of the application are awarded to the defendant.

"Ahmad J."