

Court of King's Bench of Alberta

Citation: Tudor v Accurate Screen Ltd, 2026 ABKB 237

Date: 20260326
Docket: 2401 02028
Registry: Calgary

Between:

Matthew Tudor

Plaintiff

- and -

Accurate Screening Ltd.

Defendant

**Reasons for the Decision
of the
Honourable Justice K.D. Yamauchi**

I. Introduction

[1] The Plaintiff Matthew Tudor commenced an action against the Defendant Accurate Screen Ltd (“Accurate Screen”), claiming that Accurate Screen wrongfully dismissed him. Accurate Screen argues that it had just cause to terminate Mr. Tudor’s employment on the grounds that Mr. Tudor misled Accurate Screen about his academic qualifications and that the quality of his work was lacking as a result.

[2] Pursuant to an Order that Justice Malik granted on October 1, 2024 (the “Malik Order”), the parties appeared before this Court by way of a streamlined trial. The Malik Order outlined the evidence on which the parties were able to rely and temporally limited their time to argue their case. The parties abided by the various deadlines set forth in the Malik Order.

II. Agreed Statement of Facts

[3] The parties provided this Court with an agreed statement of facts (“ASF”), which they filed as an exhibit in the streamlined trial proceedings. The ASF refers to a number of documents, which were enclosed in an agreed exhibit book (“Exhibit Book”). This Court will refer to some of the documents in the Exhibit Book as it goes through its reasons.

[4] The substantive content of the ASF is as follows:

A. Background

[5] Accurate Screen is a fabrication and grating company which provides metal screens and grating products to industrial and commercial customers.

[6] Accurate Screen is based in Calgary, Alberta and has 5 other locations in Canada.

[7] Mr. Tudor is an individual currently residing in Calgary, Alberta and is a former employee of Accurate Screen.

B. Employment History and Terms

[8] In March of 2023, Accurate Screen issued a job posting (the “Job Posting”) for the role of Vice President of Business Development (“VP Business Development”).

[9] Mr. Tudor submitted an online application to the Job Posting for the VP Business Development, including a copy of his resume.

[10] As part of the hiring process, Accurate Screen engaged the services of a recruiter, Chad Hayward. Mr. Tudor was subsequently contacted by Mr. Hayward about his application for the VP Business Development position.

[11] On March 30, 2023, Mr. Tudor had his first preliminary interview for the VP Business Development position with Mr. Hayward.

[12] On April 10, 2023, Mr. Tudor had a first interview with David Hilsenteger, the President of Accurate Screen. Mr. Tudor was also asked to complete a personality assessment.

[13] On April 11, 2023, Mr. Hilsenteger responded to Mr. Tudor's follow-up email and advised him that he was one of two candidates that were proceeding in the interview process.

[14] On April 17, 2023, Mr. Tudor had a second interview with Accurate Screen. This time the interview was attended by the following individuals from Accurate Screen, Mr. Hilsenteger, Millard Matthews, the Vice President of Operations, and Todd Bigelow, the Chief Executive Officer.

[15] Following his second interview, Mr. Tudor had to complete another personality assessment.

[16] On April 18, 2023, Mr. Tudor received a job offer from Mr. Hilsenteger for the position of VP Business Development.

[17] On April 20, 2023, Mr. Tudor accepted an offer of employment from Accurate Screen and signed a letter entitled “Offer of Employment” dated April 18, 2023.

[18] In addition to the Offer of Employment letter, Mr. Tudor also received a letter entitled Bonus Compensation dated April 18, 2023.

[19] Mr. Tudor commenced working for Accurate Screen on or about May 29, 2023, as VP Business Development.

[20] As an Accurate Screen employee Mr. Tudor was entitled to participate in Accurate Screen's benefits package provided by Manulife and managed by Navigate Benefits Solutions.

[21] Mr. Tudor also was eligible to participate in Accurate Screen's pension plan after being employed for 3 months.

[22] Mr. Tudor reported to Mr. Hilsenteger and was a member of the Executive leadership team.

[23] On November 23, 2023, Mr. Hilsenteger sent Mr. Tudor, along with Mr. Bigelow, Mr. Matthews, and Ashley Moisey, Controller, an email attaching the job descriptions for the Executive leadership team.

C. Events Leading to Mr. Tudor's Termination

[24] Upon commencing his employment with Accurate Screen, Mr. Tudor was tasked with a project that required him to manage a grading system for Accurate Screen's inventory (the "Inventory Project").

[25] Mr. Tudor completed his work on the Inventory Project by early November 2023.

[26] In or around late September early October 2023, Mr. Tudor was asked to work on a price forecasting project (the "Forecasting Project").

[27] On December 13, 2023, Mr. Tudor emailed Mr. Hilsenteger about the Forecasting Project and provided Mr. Hilsenteger with a spreadsheet.

[28] On December 15, 2023, Mr. Tudor sent Mr. Hilsenteger a further email about the Forecasting Project, attaching a copy of a spreadsheet.

[29] On December 20, 2023, Mr. Tudor sent Mr. Hilsenteger a further email about the Forecasting Project, attaching a spreadsheet.

[30] Mr. Tudor and Mr. Hilsenteger met and discussed the Forecasting Project on December 21, 2023. During this meeting, Mr. Hilsenteger asked Mr. Tudor about his skillset in statistics and Excel.

[31] Mr. Tudor and Mr. Hilsenteger met again on December 27, 2023. The topic of Mr. Tudor's education was discussed in this meeting.

[32] On December 28, 2023, Mr. Tudor sent Mr. Hilsenteger a further email about the Forecasting Project and attached a spreadsheet.

[33] On January 2, 2024, Mr. Tudor and Mr. Hilsenteger met for a third time. The topic of Mr. Tudor's education was again discussed during this meeting.

[34] Mr. Tudor was scheduled to have a Level 10 meeting with Mr. Hilsenteger on January 9, 2024. In advance of this meeting Mr. Tudor emailed Mr. Hilsenteger his L10 Summary spreadsheet.

[35] Mr. Tudor and Mr. Hilsenteger met on January 9, 2024.

[36] Prior to this meeting, Mr. Tudor also completed a self evaluation and Strengths, Weaknesses, Opportunities and Threats (“SWOT”) analysis reviewing his first 6 months in the VP Business Development role.

D. Termination of Mr. Tudor's Employment

[37] On January 10, 2024, in a meeting with Mr. Hilsenteger and Mr. Matthews, Mr. Tudor was provided a letter advising that his employment was being terminated on a with cause basis (the “Termination Letter”).

[38] At the time of his termination Mr. Tudor had been employed by Accurate Screen for approximately 6.5 months, always in the position of VP Business Development.

[39] In 2023, Mr. Tudor received a pre-payment towards a possible 2023 Executive Bonus in the amount of \$30,000.

[40] Mr. Tudor also received a cell phone allowance of \$70 per month, and prepayment towards mileage of \$300 per month.

[41] Mr. Tudor's year end Statement of Earnings and Deductions for 2023 from Accurate Screen shows his gross earnings were \$180,329.50.

[42] At the time of his termination, Mr. Tudor was entitled to receive 20 days of vacation per year.

E. Mitigation

[43] Mr. Tudor was born on October 19, 1986, and was 37 years old at the time of his termination.

[44] On April 19, 2024, Mr. Tudor obtained an offer of employment from Commercial Metals' Company to work for their subsidiary Tensar Corporation (“Tensar”) in the role of Canada Area Director.

[45] Mr. Tudor's base salary with Tensar is \$195,000.

[46] In addition to a base salary with Tensar, Mr. Tudor was eligible to participate in Tensar's bonus program and was eligible for a potential bonus of up to 35% of his salary.

[47] Mr. Tudor's employment with Tensar commenced on May 6, 2024.

[48] Mr. Tudor continues to be employed by Tensar.

III. Contested Facts

A. Mr. Tudor's Hiring

[49] Mr. Tudor argues that a Master of Business Administration (“MBA”) was not required for the VP Business Development role. The Job Posting did state that an undergraduate degree in Business Administration, or a related field, was required and ideally, an applicant would also possess an MBA.

[50] The resume that Mr. Tudor submitted with his application for the role of VP Business Development (the “Resume”) showed Mr. Tudor's education to consist of the following:

McGill University, Montreal, QC

Expected in 11/2023

MBA

Currently Ongoing

SAIT, Calgary

2024

Certificate: Business

Resume at 4

[51] At the time Mr. Tudor submitted the Resume to Accurate Screen, he did not have an undergraduate degree in business administration. Further, despite representing that he would be completing an MBA program in November 2023, at the time, Mr. Tudor was not enrolled in any MBA courses, he was not in the process of completing any MBA courses, and he had not taken any MBA courses.

[52] During cross-examination, Mr. Tudor explained that the reason he indicated that he expected to complete an MBA in November 2023 was because he was “planning on enrolling”: Transcript of Cross-Examination of Mr. Tudor on December 9, 2024 (“Tudor Transcript”) at p 12, l 25. At the time Mr. Tudor submitted the Resume to Accurate Screen, the extent of Mr. Tudor’s efforts to complete an MBA was creating an online account with McGill University: Tudor Transcript, p 7, ll 1-27, p 8, ll 1-14. Mr. Tudor did, however, advise Mr. Hayward that he had intended to enrol in the “mini MBA Programme” at McGill University and commenced the initial process of registering for that programme in April of 2023.

[53] Mr. Hilsenteger stated that Accurate Screen would not have interviewed Mr. Tudor had Mr. Tudor not listed that he had expected to complete an MBA in November 2023: Mr. Hilsenteger’s Affidavit affirmed January 14, 2025 (“Hilsenteger Affidavit”) at para 21. On April 10, 2023, Mr. Tudor had a first interview with Mr. Hilsenteger. During the interview, Mr. Tudor did not inform Mr. Hilsenteger that he was not currently enrolled in the MBA Program at McGill University: Tudor Transcript, p 18, ll 24-27, p 19, ll 1-2.

[54] On April 17, 2023, Mr. Tudor had a second interview with Accurate Screen. During the interview, Mr. Tudor again did not inform Mr. Hilsenteger that he was not currently enrolled in the MBA Program at McGill University: Tudor Transcript, p 19, ll 8-19. Mr. Hilsenteger’s evidence was that Mr. Tudor’s education was not discussed because Accurate Screen placed a level of trust on the representations set out in the Resume and he considered it demeaning and unprofessional to inquire as to the accuracy of an executive-level candidate’s resume: Hilsenteger Affidavit at para 21.

[55] Based on Mr. Tudor’s experience, education (as represented), and the interview process, Accurate Screen offered Mr. Tudor the job of VP Business Development. On April 20, 2023, Mr. Tudor accepted the job offer from Accurate Screen.

B. Mr. Tudor’s Employment with Accurate Screen

[56] Accurate Screen employed Mr. Tudor for about seven months. Mr. Tudor provides evidence that as VP Business Development, he fulfilled various duties, including but not limited to, managing and leading sales leads and staff at each Accurate Screen branch, creating sales and business development strategies, and relationship development and maintenance with customers, vendors and Accurate Screen leadership and staff: Mr. Tudor’s Affidavit sworn on December 2, 2024 (“Tudor’s Affidavit”) at para 22. Conversely, Accurate Screen’s evidence is that Mr. Tudor was given minimal practical work in the first three months of his employment and told to “do

nothing” to allow him to acclimate to the Company: Hilsenteger’s Affidavit at para 32; Transcript of Cross-examination of Mr. Hilsenteger on October 23, 2025 (“Hilsenteger Transcript”) at p 98, ll 10-17.

[57] In or around late September or early October 2023, Mr. Tudor was asked to work on the Forecasting Project. The Forecasting Project was aimed at addressing inconsistent margins on Accurate Screen’s products. The Forecasting Project required the use of statistical and quantitative analysis: Hilsenteger Affidavit at para 42. During Mr. Tudor’s work on the Forecasting Project, Accurate Screen began to have concerns regarding Mr. Tudor’s knowledge of Microsoft Excel (“Excel”), and his abilities related to statistical and quantitative analysis: Hilsenteger Affidavit at paras 46-49.

[58] Early in his tenure with Accurate Screen, Mr. Tudor was tasked with a project that required him to manage the Inventory Project. Mr. Tudor completed his work on the Inventory Project by early November 2023.

[59] In December 2023, Mr. Tudor submitted his work on the Forecasting Project to Mr. Hilsenteger. Mr. Tudor’s work showed a lack of understanding of statistical analysis and the use of Excel: Hilsenteger Affidavit at paras 50-52. Accurate Screen raised specific concerns with Mr. Tudor around his approach and work on the Forecasting Project, which Mr. Tudor was unable to address: Hilsenteger Affidavit at para 53. As a result, Accurate Screen began internally to question Mr. Tudor’s education and qualifications.: *ibid*. Ultimately, Accurate Screen had to have other employees complete the Forecasting Project as Mr. Tudor was unable to complete it: Hilsenteger Affidavit at para 55.

[60] Conversely, Mr. Tudor provides evidence that throughout his tenure with Accurate Screen, he demonstrated a strong work ethic and desire to improve his performance, if required. Mr. Tudor took on numerous projects, including the Inventory Project where he successfully implemented a grading system to decrease Accurate Screen's overall inventory levels. He also actively sought feedback to improve, including asking Mr. Hilsenteger for feedback on three separate occasions on December 13, 15, and 20, 2023, respectively, in the month prior to his termination: Tudor Affidavit at paras 25-26, 30 and Exhibit 0.

C. Mr. Tudor’s Education and Abilities

[61] On December 21, 2023, Mr. Tudor and Mr. Hilsenteger met to discuss the Forecasting Project. Mr. Hilsenteger questioned Mr. Tudor's skillset in statistics and Excel experience and indicated he found them to be insufficient. Mr. Tudor was surprised by this request as he had never been told his Excel skills were weak. He provided evidence that he had been praised by other employers for his data/Excel abilities and had ample experience with Excel: Tudor Affidavit at paras 31, 34-35. However, Mr. Tudor confirmed that he was willing to pursue additional training. This discussion caused Mr. Hilsenteger to question Mr. Tudor’s educational background, as he was “confused how someone who had purported to possess an MBA did not have the skills and abilities Accurate expected and required”: Hilsenteger Affidavit at para 58. Remember, Mr. Tudor represented in the Resume that his MBA was “Expected in 11/2023.”

[62] On December 27, 2023, Mr. Tudor and Mr. Hilsenteger met again. During that meeting, Mr. Tudor informed Mr. Hilsenteger that he was prepared to take some “refresher courses.” It was during the meeting that they discussed Mr. Tudor’s continuation of the “Mini MBA

Programme.” Mr. Hilsenteger asked Mr. Tudor what courses he had taken as part of his MBA program. Mr. Tudor “was evasive”: Hilsenteger Affidavit at para 62-63.

[63] Mr. Tudor asked whether Accurate Screen would cover the cost of these courses. Mr. Hilsenteger confirmed that Accurate Screen may be willing to provide financial assistance for Mr. Tudor's schooling: Tudor Affidavit at paras 37 and 39.

[64] On January 2, 2024, Mr. Tudor and Mr. Hilsenteger met again. There is a difference between the parties as to what exactly was discussed at that meeting. Mr. Hilsenteger's evidence is that during this meeting, Mr. Tudor informed Mr. Hilsenteger that he was not completing his MBA, but had taken “a couple of courses, a couple of years ago”: Mr. Hilsenteger's Affidavit at para 65. During cross-examination, Mr. Tudor acknowledged that it may have been January when he first informed Mr. Hilsenteger that he was not enrolled in, and had not completed, the MBA program at McGill University: Transcript of Cross-examination of Mr. Tudor on December 9, 2024 at p 46, ll 4-16.

[65] Mr. Tudor's evidence is that he informed Mr. Hilsenteger that he had reached out to McGill University about “continuing” his “Mini MBA Programme” but had yet to receive a response due to the holiday season: Mr. Tudor's Affidavit at para 38. Mr. Tudor also provided Accurate Screen with information about an Executive Development course that had been recommended to him. He provided information and a detailed written summary of the Executive Development course in his weekly L1O Summary spreadsheet: Mr. Tudor's Affidavit at para 40.

[66] Beginning in December 2023, Mr. Tudor had begun to feel Mr. Hilsenteger was overly critical of his work, and that he was being excluded from executive level discussions. On January 9, 2024, in Mr. Tudor's weekly L1O Summary spreadsheet, he indicated how the work environment was causing him anxiety and diminished self-confidence: Mr. Tudor's Affidavit at paras 41-42.

[67] Mr. Tudor met with Mr. Hilsenteger on January 9, 2024. During this meeting, Mr. Tudor brought forward his mental health concerns and that he was struggling with his mental health because of Mr. Hilsenteger's conduct. Mr. Hilsenteger did not acknowledge Mr. Tudor's concerns: Tudor Affidavit at para 42; Hilsenteger Transcript at p 257 lines 6-19. During this meeting, Mr. Hilsenteger stated that he expected Mr. Tudor to be remorseful because, in his view, Mr. Tudor had breached Accurate Screen's trust because he had held out in the Resume that he was obtaining an MBA and it now appeared to Mr. Hilsenteger that this had not happened: Hilsenteger Transcript at p 232, ll 4-16, p 253, ll 2-15.

[68] However, Mr. Hilsenteger never directly asked Mr. Tudor why he had not completed the MBA as expected. Therefore, Mr. Tudor was unaware that his decision not to complete the “Mini MBA Programme” was an issue or was being “investigated”.

D. Mr. Tudor's Termination

[69] On January 10, 2024, Mr. Tudor was given the Termination Letter.

E. Mr. Tudor's Mitigation

[70] Within four months of his termination, on April 19, 2024, Mr. Tudor was hired by Tensar as a Canada Area Director. His annual salary was \$195,000, and his annual total compensation package was approximately \$263,250. However, Tensar does not provide benefits. As a result, Mr. Tudor purchased private benefits from Manulife, at a cost of \$259.78 per month.

IV. Issues

[71] The issues to be determined at the streamlined trial, as set out in the Malick Order were:

- A. Whether Accurate Screen had just cause to terminate Mr. Tudor;
- B. If Accurate Screen did not have just cause to terminate Mr. Tudor, whether Mr. Tudor is entitled to reasonable notice pursuant to his employment contract and/or at common law and the length of the reasonable notice period;
- C. The damages to which Mr. Tudor is entitled during the reasonable notice period, if any;
- D. Whether Mr. Tudor mitigated his damages; and
- E. Whether Accurate Screen carried out the termination of Mr. Tudor's employment in a manner that breached the duty of good faith so as to entitle Mr. Tudor to an award of punitive damages.

[72] This Court will begin its discussions by outlining the general principles that apply when it is analyzing whether Accurate Screen had just cause to terminate Mr. Tudor. It will then apply those principles to the case at bar.

V. Discussion

A. Streamlined Trial

[73] The parties satisfied Justice Malik that a streamlined trial was the way in which to deal with this matter, such that they met the two-part test articulated in *Rules* r 8.25(1). As mentioned earlier, the parties disagree on certain facts. Under the old summary trial rules, this might have caused Justice Malik not to allow the parties to proceed with a streamlined trial. Justice Armstrong differentiated between the two procedures when he said:

The test for a streamlined trial differs from the test under the old summary trial rules. A summary trial could be granted where the court was satisfied that it could decide disputed questions of fact on affidavits or by other proceedings authorized by the rules for summary trial and where it would not be unjust to decide the issues by way of summary trial: *SHN Grundstuecksverwaltungsgesellschaft MBH & Co v Hanne*, 2014 ABCA 168 at para 9.

The test for a streamlined trial is no longer whether the matter can be decided using a streamlined process; it is whether it is necessary to use a streamlined process to have the matter fairly and justly resolved. The use of the word “necessary” in the new streamlined trial rule reinforces that the default process will be a regular trial unless the party moving for a streamlined trial is able to establish that the streamlined process is required or essential for the action to be fairly and justly resolved.

Arsenault v. Big Rock Brewery Limited Partnership by its general partner Big Rock Brewery Operations Corp. and Big Rock Brewery Operations Corp., 2024 ABKB 387 at paras 19-20.

[74] In *Hou v Canadian North Inc*, 2024 ABKB 549, Justice Renke said that wrongful dismissal actions will often be suitable for a streamlined trial process: *Hou* at para 9. He went on to provide the following rationale for a streamlined trial process:

... [T]he r 8.25 test reflects the approach endorsed by Justice Karakatsanis in *Hryniak v Mauldin*, 2014 SCC 7 at para 4, with “summary judgment motion” replaced by “streamlined trial:”

... In my view, a trial is not required if a summary judgment motion can achieve a fair and just adjudication, if it provides a process that allows the judge to make the necessary findings of fact, apply the law to those facts, and is a proportionate, more expeditious and less expensive means to achieve a just result than going to trial.

Hou at para 11.

[75] *Rules* r 8.25(3) appears to contemplate that there might be disputed questions of fact when it said, “A streamlined trial shall not be considered as a disproportionate process solely because ... issues of credibility may arise.” In the case at bar, the parties raised certain issues of credibility in their written and oral arguments. As will become clear in what follows, this Court concluded that it was able to make the necessary findings of fact on the record before it and the parties’ oral submissions sufficient to deal with the fundamental issues that are before it.

B. Wrongful Dismissal

1. Foundational Principles

[76] Mr. Tudor need only establish that Accurate Screen employed him and that he was dismissed without notice: *McKinley v BC Tel*, 2001 SCC 38 at para 36, [2001] 2 SCR 161, citing *Butler v Canadian National Railway*, [1939] 3 WWR 625 at 631 (Sask CA). The latter fact is a term of art, in the sense that he must establish that Accurate Screen did not provide him with notice or pay in lieu of notice. Once Mr. Tudor establishes those facts, which he has done in the case at bar, the onus shifts to Accurate Screen to prove on a balance of probabilities that Mr. Tudor’s dismissal was justified or that it had just cause to dismiss him: *ibid*.

[77] *McKinley* goes on to say that “just cause” is a finding of fact and each case must be determined on its own facts: *McKinley* at paras 33 and 57. It is not sufficient for the fact finder simply to find misconduct on the employee’s part. For there to be just cause, the fact finder must find that, such “misconduct is impossible to reconcile with the employee’s obligations under the employment contract”: *McKinley* at para 30.

[78] In *Molloy v EPCOR Utilities Inc*, 2015 ABQB 356, 19 Alta LR (6th) 285, 618 AR 229, Justice Topolniski said:

... Dismissal is justified where an employee’s dishonesty violates an essential condition of the employment contract, breaches the faith inherent in the work relationship, or is fundamentally or directly inconsistent with the employee’s obligations to his or her employer ...

Molloy at para 140, citing *McKinley* at para 48.

[79] In *McDonald v Sproule Management GP Limited*, 2023 ABKB 587, Alta LR (7th) 270, Justice Marion provides a roadmap that this Court will follow in its analysis, when he said:

The *McKinley* framework involves a factual inquiry to be determined by a contextual examination of the nature and circumstances of the misconduct ... It involves consideration of (1) the nature and extent of the misconduct; (2) the surrounding circumstances; and (3) whether dismissal is a proportional response ...

At the first step, an employer is entitled to rely on after-discovered wrongdoing ... However, the employer cannot rely on the employee's conduct after the termination ...

The second step considers the particular circumstances of the employee (including age, employment history, seniority, role and responsibilities) and the employer (including its type of business, relevant policies or practices, the employee's position within the organization, and the degree of trust reposed in the employee) ...

The third step, proportionality, is an assessment of whether the misconduct is reconcilable with sustaining the employment relationship, which requires a consideration of the proved conduct, within the employment context, to determine whether the misconduct is sufficiently serious that it would give rise to a breakdown in the employment relationship ...

McDonald at paras 65-68, 66 [citations excluded].

[80] The onus is on Accurate Screen to prove misconduct, because summary dismissal is an extreme measure, to be used only for serious misconduct of a fundamental nature: *GiVogue v International Union of Elevator Constructors*, 2021 ABPC 188 at para 37. If Accurate Screen provides this Court with a *prima facie* case of misconduct against Mr. Tudor, the burden of proof shifts to Mr. Tudor to explain how his conduct was not dishonest or worthy of dismissal. In *Thorn v RGO Office Products Ltd* (1993), 147 AR 284, 15 Alta LR (3d) 346 (KB), Justice Power said:

... Once the appellants had proved a *prima facie* case of misconduct on the part of the respondent ..., the burden of proof was shifted, and it lay upon the respondents, as it does upon all agents in a fiduciary position who deal with their principals, to prove the righteousness of the transaction. If they fail to discharge that burden satisfactorily, then the *prima facie* case against them must prevail and their guilt, justifying dismissal must be taken to be established.

Thorn at para 81, quoting *Federal Supply & Cold Storage Co of South Africa v Angehrn* (1910), LJPC 1 at 3-4 (PC).

[81] If Accurate Screen establishes misconduct on Mr. Tudor's part, did it condone such behaviour or did it acquiesce in disciplining Mr. Tudor? In *Cicalese v Saipem Canada Inc*, 2018 ABQB 835, 85 BLR (5th) 44, to which Justice Marion referred in *McDonald*, Justice Dario described condonation as follows:

Condonation occurs when an employer learns about an employee's misconduct and, despite this knowledge, allows the employee to continue in his or her

position for a considerable period of time ... Whether the length of delay is considered reasonable is determined on a case by case basis ...

...

In summary, if an employer continues to employ someone who has engaged in misconduct despite knowing about the misconduct, this can amount to condonation and the employer cannot later summarily dismiss the employee for the same misconduct ...

Cicalese at paras 37-39 [citations excluded].

[82] But condonation has its limits. The employer must have full knowledge of the nature and extent of the fault, for it cannot forgive or condone matters of which it is not fully informed. See *McIntyre v Hockin*, (1889), 16 OAR 498 at 502 (CA), cited with approval in *Doucet v Spielo Manufacturing Inc*, 2011 NBCA 44 at para 75, 372 NBR (2d) 1, 83 BLR (4th) 171; *Nossal v Better Business Bureau of Metropolitan Toronto Inc* (1985), 19 DLR (4th) 547, 51 OR (2d) 279 at 283 (CA)

[83] In *Duguay v Maritime Welding & Rentals Ltd* (1989), 100 NBR (2d) 212 at para 42, 252 APR 212, 28 CCEL 126 (NBQB), Justice Deschênes said, “the burden of proving on a balance of probabilities that an employer has condoned disloyal conduct or has waived the right to dismiss is upon the employee who asserts such a proposition.” Thus, in the case at bar, the onus rests on Mr. Tudor to prove condonation or the waiver of the right to dismiss on Accurate Screen’s part.

2. Nature and Extent of Misconduct

[84] In the case at bar, the misconduct was the alleged misrepresentation that Mr. Tudor made in the Resume concerning his academic qualifications. Mr. Tudor argues that he was not acting in bad faith when the Resume indicated that his MBA studies were “Currently Ongoing” and that he expected to receive that degree in November of 2023, and that that representation was an “error in judgment,” citing *Underhill v Shell Canada Limited*, 2020 ABQB 341 at para 83. He goes further to argue that Accurate Screen must prove that Mr. Tudor’s conduct amounted to dishonesty or fraud and, again, errors in judgment are not sufficient, citing *GiVogue* at para 27.

[85] Conversely, Accurate Screen argues that Mr. Tudor’s academic qualifications as reflected in the Resume were a misrepresentation. Mr. Tudor made this misrepresentation with the intent of wilfully misleading Accurate Screen to obtain employment. Mr. Tudor was not enrolled in McGill University’s MBA programme and he had not taken any courses leading towards an MBA at McGill University or anywhere. Accurate Screen provides the following from its cross-examination of Mr. Tudor:

Q The last page, under “education”, there – it states: (as read):

McGill University Montreal, Quebec.

Expected in 11/2023, MBA currently ongoing.

A I do.

Q At the time that you submitted this to Accurate in March of 2023, you weren’t registered as a customer in the mini MBA program; right?

A Yeah, I was not currently enrolled, yes.

Q At that time you weren't enrolled in any of the courses at all?

A That's correct.

Q At the time you submitted this resume, you hadn't taken any MBA courses?

A That's correct.

Q There's no reference to a mini MBA program on your resume?

A That's correct.

Q And when you put in that it was expected in November 2023, you were suggesting that you were going to have the MBA completed in November 2023?

A That's correct.

Q Well, Mr. Tudor, again, you understood that you weren't going to obtain an MBA, and you weren't enrolled in any courses towards the MBA, and so you understood at the time that – when you were submitting this resume to Accurate, that the information set out in this resume was not accurate?

A I thought it was fairly accurate.

Tudor Transcript, p 14, ll 8-15.

[86] From the evidence the parties provided to this Court, the information in the Resume was not “fairly accurate.” There was nothing in that portion of the Resume to suggest that it was. In fact, that information was inaccurate.

[87] Mr. Tudor seems to suggest that it was Accurate Screen's duty to inquire about Mr. Tudor's educational qualifications at the initial interview and throughout the many meetings that occurred after he was employed. He provides no authority where a court has required this of an employer. Mr. Hilsenteger reasonably stated that it was not his role to question an individual about that individual's self-stated educational qualifications. He saw such questioning as demeaning, especially when a person is applying for an executive position which, of its nature bespeaks of trust and confidence. This Court rejects Mr. Tudor's argument that Accurate Screen had to conduct its own “deep dive” into Mr. Tudor's academic qualifications. It is Mr. Tudor's duty to provide accurate information in the first instance.

[88] Was Mr. Tudor's representation a mere error in judgment? Embellishing one's academic qualifications is not a mere error in judgment. It goes to the very heart of one's moral compass and ultimately their abilities.

[89] Mr. Tudor goes on to argue that “at no point did Mr. Tudor indicate that he possessed an MBA”: Plaintiff's Brief filed February 10, 2026. That is true. But he did represent, or imply, that he was in the process of completing his coursework towards such a degree. That was not true.

[90] Mr. Tudor provides authority which suggests that such a representation did not justify the “extreme measure” of dismissal. In *Buchan and Thunder Airlines Ltd (Re)*, 2017 CarswellNat 369, an employer terminated an employee for indicating that she was a Certified General Accountant on her resume. Her membership had lapsed the prior year. The Arbitrator found that the employee's misrepresentation did not justify her dismissal and noted that the

employer had not asked her about her certification during her interview or while she was employed.

[91] In *Islip v Coldmatic Refrigeration of Canada Ltd*, 2002 BCCA 255, the plaintiff misrepresented his earnings from his previous employer to obtain a higher offer from the defendant. The court found that the misrepresentation was not of such a serious nature as to afford grounds for dismissal: *Islip* at para 24.

[92] In *Earle v Grant Transport* (1995), 15 CCEL (2d) 313, an employee misrepresented his prior salary during negotiations with the employer. Justice Mossop found that this misrepresentation amounted to mere “puffery” and did not justify the employee's dismissal: *Earle* at paras 18 and 24.

[93] Accurate Screen asks this Court to distinguish these cases from the case at bar, as, it argues, they are not analogous. In *Buchan* the employee actually possessed the designation she purported to hold but had let her registration lapse. In the case at bar, Mr. Tudor did not possess, nor was he in the process of acquiring an MBA. In *Islip* and *Earle*, the employees made a misrepresentation of an immaterial fact in their hiring. In the case at bar, Accurate Screen argues, academic qualifications are not an immaterial fact.

[94] Conversely, Accurate Screen argues, in *Schafer v Pan Matrix Informatics Inc* (1987), 80 AR 378, the employee had overstated his prior compensation and job security with a previous employer and misrepresented his influence with relevant regulators. Justice Power stated that there was justification for the termination of employment as the employee had “misstated his qualifications when negotiating his position and terms of employment” and the evidence established that the corporation would not have offered a position had they known the truth: *Schafer* at paras 41-42.

[95] In *Cornell v Rogers Cablesystems Inc*, (1987), 17 CCEL 232 (Ont DC), DCJ Fanjoy held that the dismissed employee’s resume contained material and deliberate misrepresentations that went to the root of his qualifications for a supervisory role. He cited *Schafer*, for the principle that misrepresenting qualifications in the hiring process constitutes dismissal for cause: *Cornell* at para 18.

[96] In *Clark v Coopers & Lybrand Consulting Groups*, 1999 CarswellOnt 3723, [1999] OJ No 4284, Justice Chadwick found that the employee intentionally misrepresented his academic qualifications in his resume which induced the employer to retain him in a senior position and the misrepresentation went to the root of the contractual relationship: *Clark* at paras 44-47. Accurate Screen argues that similar to the case at bar, an important consideration was that the employer had relied on the academic representations in hiring.

[97] In *Health Sciences Centre and Alberta Government Telephones, Re*, 1993 CarswellNat 3756 at paras 16-18, Adjudicator Skitsko, as he then was, found that an intentional misrepresentation in the hiring process warrants dismissal for cause.

[98] With respect, Mr. Tudor is minimizing the effect of what he had represented to Accurate Screen in the Resume. This Court finds, as did Adjudicator Skitsko in *Health Sciences* at para 17, Mr. Tudor “by his own hand” stated that his MBA programme at McGill University was “Currently Ongoing” and that he expected to receive his MBA degree in “11/2023.” This was an intentional misrepresentation. At the time he penned the Resume, Mr. Tudor was not enrolled in any MBA courses, he was not in the process of completing any MBA courses, he had not taken

any MBA courses, and he had not even applied for entry into an MBA programme. The representation in the Resume was not an innocent misrepresentation. Like Arbitrator Skitsko, this Court finds that Mr. Tudor knowingly falsified his employment application with the express intention of deceiving his soon to be employer, Accurate Screen: *Health Sciences* at para 16,

[99] Equally troubling is that even after Accurate Screen started asking questions about Mr. Tudor's academic qualifications, Mr. Tudor continued to be evasive. In the December 27, 2023, meeting between Mr. Tudor and Mr. Hilsenteger, Mr. Hilsenteger asked Mr. Tudor what courses he had taken as part of his MBA program. Mr. Tudor did not answer Mr. Hilsenteger's question.

[100] Similarly, on January 2, 2024, Mr. Tudor informed Mr. Hilsenteger that he was not completing his MBA, but had taken "a couple of courses, a couple of years ago". During his cross-examination, Mr. Tudor admitted that he had not taken any MBA courses: Tudor Transcript at p 36, ll 5-13.

3. Surrounding Circumstances

[101] The next step in assessing whether Accurate Screen has established cause for Mr. Tudor's dismissal is for this Court to consider the surrounding circumstances, including Mr. Tudor's role and responsibilities, Accurate Screen's business or activity, including its policies and practices, and the level of trust Accurate Screen reposed in Mr. Tudor. This part of the discussion focuses primarily on Mr. Tudor and his role and responsibilities, as the business of Accurate Screen has already been explained in the ASF.

[102] Mr. Tudor held the position of VP Business Development, which was a high-level executive within Accurate Screen. He was part of the "Executive leadership team." In *Molloy*, Justice Topolniski said:

Employers are entitled to hold high expectations regarding the trustworthiness of their senior or managerial employees. When a senior employee's conduct reveals character traits that undermine the employer's trust in the employee, summary dismissal may be warranted ...

Molloy at para 210. See also *Schafer* at para 39.

[103] Justice Topolniski went on to describe other principles that this Court will consider when it conducts its analysis, when she held:

- dishonest conduct will almost always justify dismissal, and the more serious and responsible the position held, the more that honesty must not only be inherent, but patent: *Molloy* at para 211. See also *Mitran v Guarantee RV Centre Inc* (1999), 72 Alta LR (3d) 20 at para 84.
- the employer is entitled to take the employee's attitude into account in deciding to terminate their employment: *Molloy* at para 218

[104] In *Poliquin v Devon Canada Corp*, 2009 ABCA 216, 454 AR 61, 8 Alta LR (5th) 45, Chief Justice Fraser said, "[a]n employee is expected to provide loyal and faithful service to his or her employer. The intensity of that obligation increases with the degree of responsibility attached to the employee's position": *Poliquin* at para 37.

[105] Chief Justice Fraser went on to say:

... Employers have the right to set the ethical, professional and operational standards for their workplaces. Doing so not only falls within an employer's management rights, it also constitutes an integral component of corporate good governance.

Poliquin at para 45.

[106] As one can see, the common law establishes that an employee who hold an executive position is expected to exhibit trustworthiness and patent honesty. This should seem obvious. However, Accurate Screen went further by stating in the Job Posting expressly stated that Accurate Screen had a "Democratic work environment, which emphasizes trust, open communication and involvement."

[107] Mr. Tudor argues that "An MBA was not required education for the VP Business Development role": Plaintiff's Brief filed February 10, 2026, at para 7. That is true, but the Job Posting said that applicants would "ideally" possess an MBA. As importantly is that Mr. Tudor did not possess the minimum, which was an "Undergraduate degree in Business Administration (or related)." Instead, he had a "Certificate" from the Southern Alberta Institute of Technology. While not downplaying the value of such a certificate, it is not a university degree. Contrary to what Mr. Tudor appears to argue, the "fact" that he was pursuing an MBA likely made up for the fact that he did not have an undergraduate degree in business administration, which places more importance on his representation that he was pursuing a graduate degree in business. Again, statistics and quantitative analysis were important skills for Mr. Tudor's position. The lack of those skills was evident to Mr. Hilsenteger when he reviewed Mr. Tudor's work on the Forecasting Project. An MBA, or any business administration degree for that matter, would have armed Mr. Tudor with those skills. He had neither.

[108] By misrepresenting his academic qualifications, Mr. Tudor breached the level of patent honesty and trust required of him in his position as part of the Executive leadership team of Accurate Screen.

[109] Accurate Screen did not provide this Court with a monetary or other quantification of the harm it suffered as a result of Mr. Tudor not having the academic qualifications he represented that he had. But does it have to show such harm? In *Fernandes v Peel Educational & Tutorial Services Ltd*, 2016 ONCA 468, 34 CCEL (4th) 42, Gillese JA said:

The fact that the School did not actually suffer that harm is not the point. It is the severity of the potential harm that must be considered when assessing the seriousness of the misconduct.

Fernandez at para 120.

[110] Mr. Tudor's work on the Forecasting Project showed his lack of understanding of statistical and quantitative analysis and the use of Excel, which caused Mr. Hilsenteger to question Mr. Tudor's academic qualifications. Statistics is a fundamental course in business school and a lack of knowledge in that area shows a deficiency. Erroneous reporting in an area fundamental to an executive's role has the potential of exposing the employer to significant harm. Further training is not the answer, when Mr. Tudor should have had that training in the first place.

4. Whether Dismissal is a Proportional Response

[111] The proportionality assessment derives from *McKinley*, where Justice Iacobucci said:

... I am of the view that whether an employer is justified in dismissing an employee on the grounds of dishonesty is a question that requires an assessment of the context of the alleged misconduct. More specifically, the test is whether the employee's dishonesty gave rise to a breakdown in the employment relationship. This test can be expressed in different ways. One could say, for example, that just cause for dismissal exists where the dishonesty violates an essential condition of the employment contract, breaches the faith inherent to the work relationship, or is fundamentally or directly inconsistent with the employee's obligations to his or her employer.

McKinley at para 48.

[112] He went on:

Absent an analysis of the surrounding circumstances of the alleged misconduct, its level of seriousness, and the extent to which it impacted upon the employment relationship, dismissal on a ground as morally disreputable as “dishonesty” might well have an overly harsh and far-reaching impact for employees. In addition, allowing termination for cause wherever an employee's conduct can be labeled “dishonest” would further unjustly augment the power employers wield within the employment relationship.

Based on the foregoing considerations, I favour an analytical framework that examines each case on its own particular facts and circumstances, and considers the nature and seriousness of the dishonesty in order to assess whether it is reconcilable with sustaining the employment relationship. Such an approach mitigates the possibility that an employee will be unduly punished by the strict application of an unequivocal rule that equates all forms of dishonest behaviour with just cause for dismissal. At the same time, it would properly emphasize that dishonesty going to the core of the employment relationship carries the potential to warrant dismissal for just cause.

McKinley at paras 56-57.

[113] In *Dowling v Ontario (Workplace Safety & Insurance Board)* (2004), 192 OAC 126, 37 CCEL (3d) 182 (CA), Gillese JA said, “the sanction imposed for misconduct is to be proportional — dismissal is warranted when the misconduct is sufficiently serious that it strikes at the heart of the employment relationship.” In so doing, the court is required to consider “the proved dishonest acts, within the employment context, to determine whether the misconduct is sufficiently serious that it would give rise to a breakdown in the employment relationship”: *Dowling* at para 53.

[114] In *Poliquin*, Chief Justice Fraser said, “certain categories of misconduct — including conflict of interest and dishonesty — have been traditionally recognized as constituting cause for an employee’s discharge without notice”: *Poliquin* at para 32. Justice Rowbotham, as she then was, said “there may be instances where the deceit and lack of trust is sufficiently significant that one incident may amount to cause for termination”: *Denhamer v RBC Dominion Securities Inc.*, 2000 ABQB 651 at para 44, 273 AR 159.

[115] Throughout this discussion one must remember that it is Accurate Screen's onus to establish Mr. Tudor's dishonesty or misconduct that justified his dismissal. What does Accurate Screen have to prove on a balance of probabilities? In *Winfield v Pattison Sign Group*, 2013 ABQB 595, 86 Alta LR (5th) 77, Justice K.G. Nielsen, as he then was, said:

For an employer to successfully defend a case such as this one, the Court must first be satisfied that the employee's actions amounted to dishonesty or fraud. The employer must be able either to indicate evidence on the record, or to adduce evidence, establishing this fact: J Sopinka et al, *The Law of Evidence in Canada*, 2nd ed (Markham, Ont: Butterworths, 1999) at §3.22.

Where actions resulting in dismissal demonstrate mistakes of judgment, but fall short of establishing dishonesty or fraudulent intent, the dismissal may well be found to have been wrongful ...

Winfield at paras 60-61.

[116] Accurate Screen is not alleging that Mr. Tudor was fraudulent when he misrepresented his academic qualifications. It does, however, argue that he was being dishonest.

[117] At this stage, the wording of the Termination Letter is important. The substantive portion provides:

Your resume stated that you were expected to complete your MBA in November of 2023. The company hired you with the expectation that you would have the ability, through your education, to work through the company's inventory and pricing structure. A project to update the company's purchasing of inventory and pricing was provided with a deadline of December 31, 2023. When the project was not completed by the deadline, an investigation into the accuracy of your education was initiated. As confirmed by Matt Tudor, you have completed two courses for up to 6 credits towards his MBA. Accurate Screen has determined it was misled by Mr. Tudor as to the amount of education he has through his resume.

[118] Mr. Tudor challenges a couple of things. First, he argues that he completed the Forecasting Project by the deadline. He also challenges the assertion that he advised Accurate Screen that he completed two courses for up to six credits towards his MBA.

[119] The evidence shows that Mr. Hilsenteger had concerns about Mr. Tudor's abilities before December 31, 2023. After Mr. Tudor submitted the draft of the Forecasting Project on December 15, 2023, Mr. Hilsenteger questioned Mr. Tudor on his abilities in Excel and statistics. Mr. Hilsenteger asked Mr. Tudor about his education and Mr. Tudor responded by saying that he was willing to take some refresher courses to deal with his Excel shortcomings. He did not reveal his status concerning his MBA programme (or lack of it).

[120] There is a difference in the evidence about what was discussed at the December 27, 2023, meeting. Mr. Hilsenteger says that he asked Mr. Tudor about the McGill programme. Mr. Tudor denies that this was discussed. Rather, Mr. Tudor's evidence was that Mr. Hilsenteger asked him about whether he had taken a statistics course. Mr. Tudor provided Mr. Hilsenteger a number of statistics courses he could take to improve his analytical abilities with respect to statistics and whether Accurate Screen would provide financial assistance for him to take these courses.

[121] At the January 2, 2024, meeting, Mr. Hilsenteger asked Mr. Tudor why they were talking about Mr. Tudor taking refresher courses if Mr. Tudor had completed or was in the process of completing his MBA. Mr. Tudor apparently told Mr. Hilsenteger that the MBA was “put on the back burner,” as he wanted to learn his new job with Accurate Screen. In fact, it was not put on the “back burner” at all as he had not even started the programme.

[122] Mr. Tudor argues that this Court should discount Mr. Hilsenteger’s evidence as he was “evasive,” he was not truthful, or that he did not have an accurate recollection of certain events. Mr. Tudor provides a number of examples, such as the fact that Mr. Hilsenteger swore that he was not in the office for most of November or that he could not recall with precision what was discussed at certain meetings. Even if this Court were to discount some or even much of what Mr. Hilsenteger says, those facts do not take away from the evidence that is before this Court with respect to Mr. Tudor’s academic qualifications and how this affected his performance.

[123] Mr. Tudor asks this Court to look at the other short-listed candidates, who also did not have the qualifications set out in the Job Posting. That may be so, but it was Mr. Tudor who represented that he was working towards an MBA, which he was not, and it was he who ultimately received a job offer. The other short-listed applicants did not receive the job offer and are not relevant to this Court’s analysis.

[124] It was not until two days after his initial interview that Mr. Tudor created an account with McGill University. He never did enrol in the “mini-MBA programme.” Should the interviewer or Mr. Hilsenteger have to take a “deep dive” into Mr. Tudor’s represented academic qualifications? Mr. Hilsenteger felt such a “deep dive” would be demeaning to a candidate who had made representations in his Resume. This Court agrees. A potential employer should be able to take a candidate who is applying for an executive position at their word. A potential employer can reasonably be expected to be able to rely on the honesty of a potential employee concerning that potential employee’s academic qualifications.

[125] The Forecasting Project required knowledge of statistics and quantitative analysis of those statistics. Because Mr. Tudor did not have the necessary academic background which would have included courses in statistics and how to analyze those statistics quantitatively, he could not thoroughly complete the Forecasting Project. And this lack of ability showed in the draft report he provided to Mr. Hilsenteger. No “refresher course” would give Mr. Tudor the necessary ability to undertake this type of project. An MBA (or any degree in business administration) would have allowed Mr. Tudor to build on an initial statistics course and apply that type of analysis to finance, marketing, accounting, and a myriad of other courses that one takes towards a business degree. One statistics course would not allow for the ability to build on that foundational course. In fact, this Court questions whether a “mini MBA programme” provides that type of development, although it need not decide whether it would. The fact is, Mr. Tudor did not have what he represented to have had in his Resume and he took no steps to acquire it. And it showed in his work.

[126] The reason for his dismissal was not because he was late in submitting the Forecasting Project or even the number (or lack of a number) of the courses he had taken towards an MBA. It was his misrepresentation of the education that he said he had completed or was in the process of completing in his Resume and the fact that he did not “come clean” when it showed in the Forecasting Project. An employer is not required to guess on an applicant’s or employee’s

education. It is entitled to rely on what the candidate or employee represents to the potential employer or employer.

[127] Were Mr. Tudor’s representations simply a case of a lack of judgment? He saw the Job Posting. He recognized that he did not have the qualifications of a business administration degree or an MBA. He drafted the Resume that included a representation that his MBA was “Currently Ongoing” and “Expected in 11/2023,” neither of which was true. To his dismay, the necessity of a business degree was critical to his executive-level job, and he could not perform it without taking a “refresher.” This goes far beyond a lack of judgment.

[128] Mr. Tudor argues that Accurate Screen should have given him an opportunity to correct this “cause.” How does one correct this? Certainly, he is not suggesting that Accurate Screen give him an opportunity to complete a four-year undergraduate degree in business administration or a two-year MBA programme. Because no evidence was tendered on the scope of McGill University’s “Mini MBA programme” neither this Court nor Accurate Screen could determine whether that programme would fill the *lacunae* in Mr. Tudor’s education. Besides, given his intentional misrepresentation in the Resume, neither this Court nor Accurate Screen should need to look into the substance of that programme. He had neither enrolled in nor commenced that programme despite his representation to the contrary.

[129] This misrepresentation is “sufficiently serious that it strikes at the heart of the employment relationship.” Accordingly, Accurate Screen has shown that it had just cause to dismiss Mr. Tudor from his employment.

C. Damages

[130] Because of this Court’s ruling, it finds that Mr. Tudor is not entitled to any damages, except one aspect that it will discuss later in these reasons. However, the parties briefly argued the issue of damages, so this Court will touch on them despite its dismissal of Mr. Tudor’s action for wrongful dismissal.

[131] In the absence of a written employment agreement which provides for a notice period, an employer may terminate an indefinite-duration employment contract without cause provided the employer gives the employee reasonable notice of their termination. In the alternative, an employer must pay the employee wages and benefits the employee would have received in lieu of the notice period: *Bahrami v AGS Flexitallic Inc*, 2015 ABQB 536 at para 18.

[132] A reasonable notice period is a matter of fact that courts decide on a case-by-case basis. The parties in the case at bar agree that the factors a court must consider are those set forth in *Bardal v Globe & Mail Ltd*, [1960] OWN 253, 24 DLR (2d) 140 (H Ct Jus), where Chief Justice McRuer said:

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.

Bardal at para 145.

[133] In the more recent case of *Baillargeon c Transforce inc*, 2012 QCCA 1495, Bouchard JCA, for the court said:

L'article 2091 C.C.Q. parle plutôt d'un délai raisonnable, chaque cas étant un cas d'espèce devant être évalué en fonction des différents critères énumérés à cet article et développés par la jurisprudence. Les plus souvent invoqués sont les suivants:

- la nature et l'importance du poste occupé par l'employé, l'idée étant que plus le poste sera important, plus le délai-congé sera long;
- le nombre d'années de service de l'employé. Plus ce dernier sera ancien dans l'entreprise, plus le délai-congé sera long;
- l'âge de l'employé. Plus l'employé sera âgé, plus on présume qu'il lui faudra du temps pour se replacer sur le marché du travail et plus son délai-congé sera long;
- les circonstances ayant mené à son engagement. Un employé, par exemple, qui est sollicité et qui laisse un emploi rémunérateur et certain aura droit à un délai-congé plus long que celui qui est sans emploi ou dont l'emploi est incertain;
- la difficulté de se trouver un emploi comparable. Plus cette difficulté sera grande, plus le délai-congé sera long.

Baillargeon at para 53.

[134] These factors emanate from the *Civil Code of Québec* so arguably they are not binding on this Court. Nonetheless, four of the factors are essentially those articulated by Chief Justice McRuer in *Bardal*. The fifth factor has been considered in other cases, so they bear some importance to this Court's analysis.

[135] Bouchard JCA went on to say:

Chose fondamentale à ne pas oublier, aucun de ces critères ne doit être examiné isolément. C'est dans une perspective globale qu'ils doivent être pris en compte, ce qui constitue un délai-congé raisonnable étant "essentiellement une question de fait qui varie avec les circonstances propres à chaque espèce."

Baillargeon at para 54 [citations excluded].

[136] Other courts have taken a similar approach that no one factor takes precedence and should not be considered in isolation. Rather, all factors should be considered and weighed in the balance to arrive at what constitutes "reasonable notice." See e.g. *Bahrami*, where Justice Shelley said:

... No one factor should be given disproportionate weight, although, depending on the situation of a particular employee, one or more of the factors which take the case outside the norm may have more of an impact on the result than other, more neutral considerations ...

Bahrami at para 20 [citations excluded].

[137] This Court will consider the *Bardal* factors and will briefly touch on the additional factor outlined in *Baillargeon*.

1. The Character of the Employment

[138] *Baillargeon* refers to this factor a bit differently by calling it “la nature et l’importance du poste occupé par l’employé,” or the nature and importance of the position held by the employee. Justice Shelley, in *Bahrami* agrees with the court in *Baillargeon*, when she said that generally, “the more senior an employee is within an organization, the greater the length of notice he or she should receive upon termination without cause”: *Bahrami* at para 21. Practically, the reason for this is that, theoretically, a person holding a more senior position will have difficulty finding employment to the same level: *Bahrami* at para 23.

[139] But seniority does not end the analysis. With respect, *Bardal* was correct when referring to this factor as requiring the court to look at the “character of the employment.” Said differently, a title does not necessarily establish the importance of the job.

[140] Mr. Tudor was hired as a VP Business Development. Because of what occurred during his tenure with Accurate Screen, he did not reach that level as he did not show the ability to operate as a senior executive in the organization. As explained earlier, this was due, in part, to his lack of training in statistics and quantitative analysis. Because of this, it is difficult for this Court to characterize his role. It was certainly not of the level of a vice-president. At best, it was more in the nature of a managerial role, but even that might be generous. The “character of his employment” does not entitle him to a long notice period.

2. The Length of Service of the Employee

[141] In *Baillargeon*, Bouchard JCA said, “Plus ce dernier sera ancien dans l’entreprise, plus le délai-congé sera long.” Conversely, Justice Shelley said that a short period of employment “would suggest a shorter period of notice”: *Bahrami* at para 38. See *contra Sciancamerli v Comtech (Communication Technologies) Ltd*, 2014 BCSC 2140 at para 35.

[142] In the case at bar, Mr. Tudor was employed by Accurate Screen for just over seven months. This is not a long period of employment, so it should reduce the amount of notice he is entitled to receive.

3. The Age of the Employee

[143] Bouchard JCA says, “Plus l’employé sera âgé, plus on présume qu’il lui faudra du temps pour se replacer sur le marché du travail et plus son délai-congé sera long”: *Baillargeon* at para 53. One can imagine situations where this does not necessarily hold true, depending on the other *Bardal* factors.

[144] In the case at bar, Mr. Tudor was 37 years old at the time Accurate Screen terminated him. Like Mr. Bahrami, who was 44 years old at the time of his termination, this meant he likely had “many years of productive employment ahead of him as he does behind him”: *Bahrami* at para 35. Justice Shelley held, as a result, that Mr. Bahrami’s age neither increased nor decreased the length of notice he ought to have received. This Court agrees with that finding in the case of Mr. Tudor.

4. The Availability of Similar Employment, Having Regard to the Employee's Experience, Training and Qualifications

[145] In *Baillargeon*, Bouchard JCA looked at what actually unfolded with respect to M. Baillargeon's efforts to find a job following his termination. He began his job search about six weeks after he was terminated (which was just before the Christmas season, and it took him about 13 months to find comparable employment). As Bouchard JCA said, "Cet élément milite en faveur d'un délai-congé long": *Baillargeon* at para 63.

[146] Similarly, in *Saalfeld v Absolute Software Corp*, 2009 BCCA 18 at para 15, Huddart JA, for the majority, said, "it is legitimate" to take evidence of the former employee's job search between the date they were terminated to the date they found comparable employment into account in assessing this factor.

[147] In the case at bar, Mr. Tudor was able to secure comparable employment in just under four months after his termination. This short period militates in favour of a shorter notice period.

5. The Circumstances That Led to the Employee's Hiring

[148] The example that Bouchard JCA provides in *Baillargeon* is where an employee is solicited by the new employer and leaves a good job to join the new employer. In such a case, the employee should be entitled to longer notice. In *D'Souza v Acero Engineering Inc*, 2017 ABQB 775, Justice Brooker found that the employee was induced to leave his former employer. As a result, he found that this increased the notice period.

[149] In the case at bar, Mr. Tudor was not induced to leave his former employer. He sought out the position with Accurate Screen after seeing the Job Posting. As a result, he is not entitled to longer notice.

6. Appropriate Notice

[150] In *Bahrani*, Justice Shelley provides a short catalogue of cases that deal with individuals in the rough age-range as Mr. Tudor, who held nominal "Vice-President" or equivalent jobs. The notice period ranged from two and a half months to 11 months. The time it took Mr. Tudor to actually find comparable employment provides a realistic period within the range, so this Court finds that had he not be dismissed for cause, he would have been entitled to four months notice.

7. The Bonus

[151] The bonus creates an interesting problem. When he was hired, Mr. Tudor received a prepayment of \$30,000 towards a potential "discretionary" bonus. In *Schaufert v Calgary Co-Operative Association Limited*, 2021 ABQB 579 at para 89, 35 Alta LR (7th) 368, Justice Eamon said:

Where a bonus is discretionary, the Courts have generally asked whether it was integral to the employee's compensation as an aid to deciding what the employee would have earned or been paid during the reasonable notice period ... Alberta courts have considered a variety of factors in considering whether the bonus would have been awarded: the history or pattern of bonus payments; the size of a bonus as a component of total remuneration; the use of a known or prescribed formula to calculate a bonus ...

[Citations excluded].

[152] Thus, it appears that employees might still be entitled to a “discretionary” bonus, depending on the circumstances. Arguably, even if a “discretionary” bonus were tied to the employer’s financial performance, the dismissed employee might still be entitled to the bonus if bonuses were paid to the remaining employees during a year that the employer’s financial performance did not merit such a bonus. However, in *Sobolewski v Advanced Completions Technology Services Ltd*, 2026 ABKB 10 at para 65, Justice Silver found that the dismissed employee was not entitled to receive the discretionary bonus as there was no evidence that the conditions necessary for the eligibility of the bonus were extant at the time of employee’s dismissal.

[153] In *Eberle v Sunhills Mining Limited Partnership*, 2018 ABQB 389, Applications Judge Schlosser found that the former employee was entitled to a “non-discretionary” bonus if it was an integral part of the employee’s wage structure: *Eberle* at para 30. However, he would not be entitled to a one-time discretionary bonus: *Eberle* at para 38. From the quantum of the prepayment that Mr. Tudor received, it appears that the bonus was an integral part of Mr. Tudor’s compensation.

[154] In the case at bar, Mr. Tudor was provided with a letter dated April 16, 2023 (the day on which he was hired), outlining the “Bonus Compensation.” Accurate Screen paid the Bonus Compensation based on Accurate Screen satisfying three objective criteria: (i) an employee survey portion; (ii) a customer survey portion; and (iii) a net income target. For the purposes of the case at bar, Mr. Hilsenteger calculated the three criteria, which showed that Accurate Screen did not meet the objective targets: Hilsenteger Affidavit, Exhibit J. Despite this, executive bonuses were paid to other members of the Executive leadership team for the fiscal period ending March 2024: Hilsenteger Transcript p 118, ll 18-21. Obviously, Mr. Tudor was not employed by the end of Accurate Screen’s fiscal year. However, he was employed during the fiscal year April 2023 through March 2024. Mr. Tudor was employed by Accurate Screen from May 29, 2023, through January 10, 2024, for just over seven months, despite what the ASF says (6.5 months).

[155] This Court has no evidence on exactly how Accurate Screen calculated its executive bonuses for the year ending March 31, 2024. Because other Accurate Screen executives received a bonus for the period ending March 31, 2024, this Court finds that Mr. Tudor is entitled to receive a *pro rata* bonus for the roughly seven months he was part of Accurate Screen’s Executive leadership team. From that amount will be deducted the \$30,000 he received as a prepayment on this bonus. There might be a substantial amount owing, or no amount, or a small amount. This Court simply does not know. But Accurate Screen must calculate the amount of Mr. Tudor’s *pro rata* bonus based on an executive who held the same or a similar position to that held by Mr. Tudor.

VI. Conclusion

[156] Based on the foregoing, this Court dismisses Mr. Tudor’s action for wrongful dismissal against Accurate Screen. Mr. Tudor is entitled to receive a *pro rata* portion of the executive bonus based on the time Accurate Screen employed him, less the \$30,000 prepaid amount. Again, the balance may be substantial, nominal, or nothing.

[157] As Accurate Screen has been successful in defending this lawsuit, it shall be entitled to its costs under the appropriate Schedule C column.

Heard on the 10th day of March, 2026.

Dated at the City of Calgary, Alberta this 26th day of March, 2026.

K.D. Yamauchi
J.C.K.B.A.

Appearances:

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