

Can I Still Claim Constructive Dismissal If I Was Moved To An Easier Role?



Cynthia Lazar answers labour & employment questions in The Globe and Mail.

THE QUESTION

I was already thinking of quitting my job when my department was restructured. I've ended up in a different role that actually has fewer responsibilities but with the same pay as I had before. It's an easier job. But I don't like the company and I don't want to stay, even in this new role. Could I claim constructive dismissal for moving to a new role with different responsibilities, even if it's for an easier job and my pay hasn't changed?

THE ANSWER

Employees can be dismissed in a number of ways. An actual dismissal is clear – your employer tells you your employment is severed, either with or without cause. “Constructive dismissal” is different; it is sometimes called a “forced quit.”

Constructive dismissal has two branches. In the first, your employer unilaterally changes a fundamental term or condition of your employment. In this case, it is unclear whether your employer unilaterally imposed the role change or if you agreed to it, or if the change was “fundamental” or “essential”. In any event, a change resulting in improved conditions is not a constructive dismissal.

The second branch of constructive dismissal is when your employer acts like it does not intend to be bound by the employment contract. This often presents as a requirement to work in intolerable circumstances. There is insufficient information to assess this, but consider: Will you report to someone who formerly reported to you? Will you lose prestige in the new role? Is the new role embarrassing given your qualifications? This requires individualized analysis and you should consult an employment lawyer if you wish to proceed.

Timing is important. If you have worked in the new role without objection, then you may have “condoned” or accepted the change. Courts have found condonation after only a couple of weeks in the new situation.

Constructive dismissal is very hard to prove. If you can tough it out, it is prudent to work until you have replacement employment and then resign.

If you are unionized, you should consult your union, as different considerations may apply.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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