Constructive Dismissal – Know The Laws of Your Province



Employer actions that can result in a **constructive dismissal** are when the **employer** breaches a written or unwritten term in the **employee's** contract. If the breach is serious and the **employee** resigns their employment, the court may treat it as a dismissal instead of as a typical voluntary resignation. When a court treats a resignation this way, it allows the **employee** to pursue severance as if it were a wrongful dismissal.

ALBERTA

Constructive Dismissal Process

Employer actions that can result in a **constructive dismissal** are when the **employer** breaches a written or unwritten term in the **employee's** contract. If the breach is serious and the **employee** resigns their employment, the court may treat it as a dismissal instead of as a typical voluntary resignation. When a court treats a resignation this way, it allows the **employee** to pursue severance as if it were a wrongful dismissal.

Not every breach of an employment contract is sufficient to allow a resignation to be considered a **constructive dismissal** in Alberta. Generally, it either has to be one major breach of a term of employment, or otherwise shown through the **employer's** actions that they do not intend to follow the employment contract.

Causes for Constructive Dismissal – Common Signs of Constructive Dismissal

- Compensation (wages) cuts and other changes.
- Demotions, or title or duty changes.
- Taking away privileges.
- Taking away reporting
- Lay-offs.
- Suspensions (and possibly other discipline).
- Changes to working conditions, location, etc.
- Changes to management structure.
- Discrimination.

- Harassment / Bullying.
- Generally hostile or unsafe work environment.

Further details on the Employment Standards Code can be found at Canlii.org and Bowriveremploymentlaw.com.

BRITISH COLUMBIA

Constructive Dismissals in British Columbia

A **constructive dismissal** is when an **employee** is compelled to resign due to a fundamental change in their job. Since unreasonable work conditions are the result of the **employee** leaving, their resignation is seen as a termination and they can file a wrongful dismissal claim.

Employees looking to make a claim for **constructive dismissal** must state they experienced one of the two following situations:

- **An intolerable workplace:** When the **employee** experiences harassment, bullying, or another form of abuse from their **employer** that makes the work conditions unbearable.
- **A unilateral change of an essential term of employment:** In this scenario, the **employee** experiences a significant and detrimental change to the terms of their employment, such as:
  - An unfavorable change in work location;
  - A pay cut (e.g., commissions, non-discretionary bonus, benefits, etc.);
  - A substantial change in job responsibilities;
  - An unjustified demotion;
  - A reduction in wage rate;
  - A change in geographic location;
  - Limiting of authority;
  - Demotion; and
  - A change in responsibilities imposed by the **employer**.

If an **employer** is found responsible for **constructively dismissing** an **employee**, they will have to provide the **employee** with a severance package.

Further details on the Guide to the Employment Standards Act and Regulations can be found at Gov.BC.ca and at Peninsulagrouplimited.com.

MANITOBA

Constructive dismissal, also known as **constructive discharge**, is a legal concept in employment law that occurs when an **employer** makes working conditions so intolerable for an **employee** that the **employee** feels compelled to resign. In other words, although the **employee** technically voluntarily resigns, the resignation is considered involuntary in the eyes of the law because the **employer** has essentially forced the **employee** to leave by creating an untenable work environment.

Potential Consequences of Constructive Dismissal For Employers

A. **Legal Liability:** If an **employee** successfully proves **constructive dismissal**, the **employer** may be liable to pay damages to compensate the **employee** for losses

suffered as a result of the dismissal.

B. **Wrongful Dismissal Lawsuits: Employee** may also pursue a wrongful dismissal lawsuit if they believe their termination breached the terms of their employment contract or violated employment standards legislation.
C. **Reputational Damage:** Word of the **constructive dismissal** and any ensuing legal action could damage the **employer's** reputation, both within the industry and among potential future **employees**.
D. **Employee Morale and Productivity:** Creating a toxic or hostile work environment that leads to claims of **constructive dismissal** can have a negative impact on **employee** morale, productivity, and overall workplace culture.
E. **Legal Costs:** Defending against **constructive dismissal** claims can involve significant legal costs, including the cost of hiring lawyers and potentially paying settlements.
F. **Regulatory Penalties:** The **employer** may face penalties or fines from regulatory bodies or labour standards agencies for violations of employment laws or regulations.

Constructive Dismissal / Avoidance

Employers should implement a strategy when making changes to the terms of employment.

- **Get everything in writing.**A written employment contract is critical.
- **Give Notice.**If you plan to make changes, give notice and the opportunity to ask questions. **Employees** have the right to dispute changes.
- **Be transparent.** Being straightforward and honest is the best approach. **Employees** will be much more receptive to the situation.
- **Take employee complaints seriously.** Complaints about a toxic work environment, working conditions, harassment, etc. must be taken seriously.
- **When possible, offer additional compensation.**If you do need to change contracts, offering new compensation will help greatly. Especially when the contract change is negative, having a monetary increase often offsets these concerns.

Further details on Constructive Dismissal in Manitoba can be found at Cfib-fcei.ca.

NEW BRUNSWICK

Constructive dismissal occurs in instances where an **employer's conduct** shows an intention of no longer wishing to be bound by the employment contract. There are two distinct branches of **constructive dismissal**.

A. **The first branch** occurs when an **employer** unilaterally changes or breaches an express or implied term of the employment agreement and such change or breach is sufficiently serious. Most often, the change or breach involves an **employee's** compensation, work duties or place of work. It is important to note that not every change or breach by an **employer** will amount to **constructive dismissal**; the question is one of degree. For example, a change from earning $80,000 to $78,000 per year or the addition of a few minor work duties would probably not be sufficient to establish **constructive dismissal**. However, the deletion, without prior notice, of a bonus that accounts for 25 per cent of an **employee's** overall annual compensation would most likely meet the threshold.
B. The **second branch** of **constructive dismissal** does not require a specific substantial change to an **employee's** contract, but consists of **employer** conduct, that when viewed in all the circumstances, would lead a reasonable person to conclude that the **employer** no longer intends to be bound by the employment contract. Put another way, the **employer's** conduct and treatment of the **employee**

must be such that it has made continued employment for the **employee** It should be noted that “intolerable” is not synonymous with “difficult”. The **employee’s** workplace must be so unendurable, whether it is due to coworker harassment, work overload, or some other component of the **employee’s** work, that a reasonable person would not expect the **employee** to continue with the employment relationship in its current state.

C. Where either of the **two constructive dismissal** scenarios occur, the **employee** has two options: (1) accept the **employer’s** conduct or changes made, or (2) treat the employment relationship at an end and sue the **employer** for wrongful dismissal. Since the **employee** has not been formally dismissed by the **employer**, the act of the **employee** treating the contract at an end by resigning is referred to as **constructive dismissal**.
D. While many **employees** may believe that they have a claim for **constructive dismissal**, an **employee** must be cautious before taking the plunge and resigning. First, in order to receive damages for wrongful dismissal, many **employees** commence formal civil actions against their former **employer**. Second, the burden rests with the **employee** to prove he or she was **constructively dismissed** and is thereby entitled to damages for wrongful dismissal. If deemed unsuccessful, the **employee** may receive no financial award and has resigned from employment for no legal reason.
E. The **employer** will need to prove that the **employee** received a dismissal notice. Where the **employer** does not provide the reasons in writing, the dismissal becomes a termination and for an **employee** employed with an **employer** for 6 months or more, the **employer** will be required to pay the **employee** what he would have earned during the applicable notice period.

Further details on the Employment Standards Act can be found at Laws.gnb.ca.

NEWFOUNDLAND & LABRADOR

Constructive dismissal can occur if an employee resigns in response to a change to their job. Specifically, this may occur when an employer significantly changes a fundamental employment term or condition without the employee’s actual or implied consent. **Constructive dismissals** can also result from a series of small changes that, when added together, affect an employee’s work and ultimately lead to resignation.

Employee Protection

Employers in Newfoundland and Labrador have specific obligations and requirements to manage and deal with **constructive dismissal** in the workplace. These obligations are primarily guided by the **Employment Standards Act** in Section **43.21 (1) to (4)**.

(1) An **employer shall** not dismiss an employee or give notice of dismissal to an employee because an employee intends to take, applies for or takes leave under this Part.

(2) Where an **employee** is dismissed by his or her **employer** contrary to subsection (1), the onus of proving that the reason for dismissal is unrelated to the leave rests with the employer.

(3) An **employer shall** reinstate an employee at the end of his or her leave under this Part on terms and conditions that are not less beneficial than those that existed before the leave began.

(4) Unless the **employer** and the **employee** otherwise agree, a period of leave under this Part does not count towards the application of the rights, benefits, and

privileges conferred by this Act upon an employee, but the period worked upon resumption of employment after leave **shall** be considered, for the purpose of this Act, to be continuous with the period worked before the leave. **Section 43.21 (1) to (4).**

Further details on the Employment Standards Act can be found at Assembly.NL.

NOVA SCOTIA

Employers in Nova Scotia have specific obligations and requirements to manage and deal with **constructive dismissal** in the workplace. These obligations are primarily guided by the **Labour Standards Code** in Section **71(1) to (3)**, **72(1) to (4) and 73(1)**.

Dismissal or suspension without just cause

71 (1) Where the period of employment of an employee with an **employer** is ten years or more, the **employer shall** not discharge or suspend that **employee** without just cause unless that **employee** is a person within the meaning of person as used in clause (d), (e), (f), (g), (h) or (i) of subsection (3) of Section 72.

(2) An **employee** who is discharged or suspended without just cause may make a complaint to the Director in accordance with Section 21.

(3) An **employee** who has made a complaint under subsection (2) and who is not satisfied with the result may make a complaint to the Board in accordance with Section 23 and such complaint **shall** be deemed to be a complaint within the meaning of subsection (1) of Section 23. R.S., c. 246, s. 71; 2010, c. 37, s. 106.

Termination of employment by employer

72 (1) Subject to subsection (3) and Section 71, an **employer shall** not discharge, suspend, or lay off an **employee**, unless the employee has been guilty of willful misconduct or disobedience or neglect of duty that has not been condoned by the **employer**, without having given at least:

(a) one week’s notice in writing to the person if his period of employment is less than two years;

(b) two weeks’ notice in writing to the person if his period of employment is two years or more but less than five years;

(c) four weeks’ notice in writing to the person if his period of employment is five years or more but less than ten years; and

(d) eight weeks’ notice in writing to the person if his period of employment is ten years or more.

(2) Subject to subsection (3), and notwithstanding subsection (1), where an **employer** discharges or lays off ten or more persons in an establishment within any period of four weeks or less, the **employer shall** give notice of not less than:

(a) eight weeks if the employment of ten or more persons and fewer than one hundred persons is to be terminated;

(b) twelve weeks if the employment of one hundred or more persons and fewer than three hundred is to be terminated;

(c) sixteen weeks if the employment of three hundred or more persons is to be terminated.

(3) Subsections (1) and (2) do not apply to:

(a) a person whose period of employment is less than three months;

(b) a person employed for a definite term or task for a period not exceeding twelve months;

(c) a person who is laid off or suspended for a period not exceeding six consecutive days;

(d) a person who is discharged or laid off for any reason beyond the control of the **employer** including complete or partial destruction of plant, destruction or breakdown of machinery or equipment, unavailability of supplies and materials, cancellation, suspension, or inability to obtain orders for the products of the **employer**, fire, explosion, accident, labour disputes, weather conditions, and actions of any governmental authority, if the **employer** has exercised due diligence to foresee and avoid the cause of discharge or lay-off;

(e) a person who has been offered reasonable other employment by his **employer**;

(f) a person who, having reached the age of retirement established by the **employer** on the basis of a bona fide occupational requirement for the position in which that person is employed, has his employment terminated;

(g) a person who is laid off in circumstances established by regulation as an exception to subsection (1) or (2);

(h) a person employed in the construction industry;

(i) a person employed in an activity, business, work, trade, occupational profession, or any part thereof, that is exempted by regulation.

(4) Notwithstanding subsections (1), (2) and (3), but subject to Section 71, the employment of a person may be terminated forthwith where the **employer** gives to the person notice in writing to that effect and pays him an amount equal to all pay to which he would have been entitled for work that would have been

For more information, see:

- Termination Of Employment by Employee **Section 73 (1).**

Further details on the Labour Standards Code can be found at Nslegislature.ca.

NORTHWEST TERRITORIES AND NUNAVUT

Employers in Northwest Territories and Nunavut have specific obligations to manage and deal with **constructive dismissal** in the workplace.

Definitions

Constructive termination

Where an employer has substantially altered a condition of employment and the Labour Standards Officer is satisfied that the purpose of the alteration is to discourage

the employee from continuing in the employment of the employer, the Labour Standards Officer may declare that the employer has terminated the employment of the employee. **Section 14.08.**

The Employment Standards Officer may declare that an **employer** has terminated the employment of an **employee**, if the Employment Standards Officer is satisfied that (a) the **employer** has substantially altered a condition of the employee's employment; and (b) the purpose of the alteration is to discourage the **employee** from continuing in the employment of the employer. **Section 40.**

Employer Prohibitions

An **employer shall** not dismiss, suspend, lay off, demote, or discipline an **employee** due to the **employee** taking or intending to take a leave of absence in accordance with this Part, or take into consideration the employee taking or intending to take a leave of absence in accordance with this Part in any decision to promote or train an **employee**. **Section 39.7.**

Further details on the Labour Standards Act and Employment Standards Act can be found at canlii.org and gov.nt.ca.

ONTARIO

Employee Notice

An employee to whom notice has been given under this section **shall** not terminate his or her employment without first giving the employer written notice.

What is Constructive Dismissal?

Constructive dismissal is a legal concept that allows the court to decide if an **employee** has been terminated, even in circumstances where the **employee** has appeared to have quit. Usually, the **employer** has failed to comply with the employment contract or switched a term in the contract without the **employee's** knowledge in a significant respect, thus forcing the **employee** to quit. For example, if the **employer** makes changes to the **employee's** terms and conditions of employment that result in a significant reduction in salary or a significant adverse change in such things as the **employee's** work location, hours of work, authority, or position, that **employee** may be forced to quit. **Constructive dismissal** may also include situations where an **employer** harasses or abuses an **employee**. If an **employer** gives an **employee** an ultimatum to **"quit or be fired,"** and the **employee** resigns in response, this can be considered constructive dismissal. However, if a change in the contract becomes effective after reasonable notice of the change, then there is no **constructive dismissal**.

Signs of Constructive Dismissal

- Evidence of reduction or elimination of salary, bonuses, commission, benefits, and entitlement.
- Temporary layoff.
- Scheduling or shift changes that impact hardship such as childcare, religious belief, and/or obligations affecting your personal life or work balance that seem unfair or unreasonable.
- Transfer to another department
- Demoted and responsibilities reduce.

- Working in an unstable environment and hostile environment.

Categories of Constructive Dismissal

1. A new term introduced by the **employer** without notice and the consent of the **employee**.
2. The change will impact the **employee's** job term.
3. If the **employee** refuses the terms of the employment contract.

Further details on Constructive Dismissal Ontario can be found at Monkhouselaw.com and Tailorlaw.com.

PRINCE EDWARD ISLAND

Constructive Dismissal – Definition

Where an **employer** unilaterally reduces an **employee's** pay or benefits or reassigns work duties to such an extent that the essential nature of the **employee's** position is altered, the **employee** may potentially consider their employment contract to have been repudiated and claim against their **employer** for **constructive dismissal** and monetary damages. It is important to note that the change need not reference specific terms of an employment agreement or job description. Rather, an alteration to an internal policy or procedure that has a significant impact on an **employee's** terms and conditions of employment may be enough to trigger **constructive dismissal**.

Minor changes to an **employee's** job duties will likely not trigger a **constructive dismissal**, such as the requirement to wear personal protective equipment. **Employers** have the right to make reasonable changes to an **employee's** job duties and responsibilities in order to properly manage their business and adapt to changing market conditions.

Employer Best Practices

- Where changes are significant, provide **employees** advanced notice of when these changes will take place.
- If notice cannot be provided, consider providing the **employee** something of value in exchange for the changes, such as additional vacation time, stock options, or a paid bonus upon returning to normal operations.
- Reduce the organizational changes to writing and have the affected **employees** sign off that they have read, understood and agree to the changes.
- Where there are several significant changes to an **employee's** position, consider offering the **employee** new employment under a new employment contract.

Employers Duty to Mitigate

An **employee** who has been constructively dismissed is obligated to mitigate their losses by finding alternative comparable work. Often, **employees** have not been required to mitigate such losses by continuing to work with the **employer**; however, in some circumstances, an **employee** may have an obligation to mitigate their losses by continuing employment with the **employer**. This is most likely to occur where the salary offered is similar, the working conditions are the same (or not substantially different), and where the personal relationships are not acrimonious.

Further details on the Constructive Dismissal can be found at Mltaikins.com.

QUÉBEC

Employers in Quebec have specific obligations and requirements to handle and deal with issues relating to dismissals and layoffs in the workplace pursuant to the **Employment Standards Act**.

Dismissals and Layoffs

If the employer makes dismissals or layoffs that would have included the **employee** had the **employee** remained at work, the employee retains the same rights with respect to a return to work as the employees who were dismissed or laid off. **Section 79.5.**

This division **shall** not grant to an employee any benefit to which the **employee** would not have been entitled if the **employee** had remained at work. **Section 79.6.**

Employee Dismissal and Layoff Complaint Procedure

An **employee** credited with two years of uninterrupted service in the same enterprise who believes they have not been dismissed for a good and sufficient cause may present a complaint in writing to the Commission des normes, de l'équité, de la santé et de la sécurité du travail, or mail it to the address of the Commission des normes, de l'équité, de la santé et de la sécurité du travail within 45 days of the dismissal, except where a remedial procedure, other than a recourse in damages, is provided elsewhere in this Act, in another Act or in an agreement. **Section 124.**

If the complaint is filed with the Administrative Labour Tribunal within this period, failure to have presented it to the Commission des normes, de l'équité, de la santé et de la sécurité du travail cannot be set up against the complainant.

Where the Administrative Labour Tribunal considers that the employee has been dismissed without good and sufficient cause, the Tribunal may:

(1) order the employer to reinstate the employee;

(2) order the employer to pay to the employee an indemnity up to a maximum equivalent to the wage the employee would normally have earned had the employee not been dismissed;

(3) render any other decision the Tribunal believes fair and reasonable, taking into account all the circumstances of the matter. **Section 128.**

Administrative Labour Tribunal Specific Obligation

In the case of a domestic worker or a person whose exclusive duty is to take care of or provide care to a child or to a sick, handicapped or aged person, the Administrative Labour Tribunal may only order the payment to the employee of an indemnity corresponding to the wage and other benefits of which the employee was deprived due to dismissal.

Further details on the Employment Standards Act can be found at Canlii.org.

SASKATCHEWAN

The phrase **"constructive dismissal"** describes situations where the **employer** has not directly fired the employee. Rather, the **employer** has:

- Failed to comply with the contract of employment in a major respect;
- Unilaterally changed the terms of employment; or
- Expressed a settled intention to do thus forcing the **employee** to quit.

Constructive dismissal is sometimes called **"disguised dismissal"** or **"quitting with cause".** This is because it often occurs in situations where the **employer** offers the **employee** the alternative of:

- Leaving, or
- Submitting to a unilateral and substantial alteration of a fundamental term or condition of their employment.

It is the **employer's** failure to meet its contractual obligations that distinguishes a **constructive dismissal** from an **ordinary resignation**.

The **employer's** action must be unilateral, which means the **employer** must do it without the consent of the **employee**. If it is not unilateral, the variation is not a **constructive dismissal** but merely an agreed change to the contract of employment.

If the **employee** clearly indicates non-acceptance of the new conditions of employment to the **employer**, there has been a constructive dismissal. However, this is only if the **employee** leaves within a reasonable period (usually short). By not resigning, the **employee** indicates he or she accepts the new conditions of employment.

Courts have held that there has been a constructive dismissal even though the complainant remains in the employ of the **employer**. This includes, for example, cases where the **employee**:

- Continues to work under the new conditions in order to mitigate damages, and
- Either protests the new conditions explicitly or makes it clear that he still reserves the right to take legal action.

The **employee** cannot be said to have condoned or accepted the change in working conditions if the **employee**:

- Formally commences legal proceedings in respect of the change while remaining in the employment of the **employer**, or
- Does not formally initiate proceedings but simply attempts to negotiate the matter while remaining at work.

Further details on Individual Layoff or Termination can be found at https://www.saskatchewan.ca and https://www.canada.ca.

YUKON TERRITORY

Employers in the Territory of Yukon have specific obligations and responsibilities to manage and deal with dismissals or discipline of employees during the course of employee work operations.

Prohibitions relating to employers

No **employer** or person acting on behalf of an **employer shall:**

(a) Refuse to employ or to continue to employ or suspend, transfer, lay off, or otherwise discriminate against any person with respect to employment, pay, or any other term or condition of employment or intimidate, threaten, or otherwise discipline any person, because the person:

(i) Is or proposes to become, or seeks to induce any other person to become, a member, officer, or representative of a trade union or participates in the promotion, formation, or administration of a trade union;

(ii) Has been expelled or suspended from membership in a trade union for a reason other than a failure to pay the periodic dues, assessments, and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union;

(iii) Has testified or otherwise participated or may testify or otherwise participate in a proceeding under this Part;

(iv) Has made or is about to make a disclosure that the person may be required to make in a proceeding under this Part;

(v) Has made an application or filed a complaint under this Part; or

(vi) Has participated in a strike that is not prohibited by this Part or exercised any right under this Part.

(b) Impose any condition in a contract of employment that restrains, or has the effect of restraining, an employee from exercising any right conferred on them by this Part;

(c) Suspend, discharge or impose any financial or other penalty on an employee, or take any other disciplinary action against an employee, by reason of their refusal to perform all or some of the duties and responsibilities of another employee who is participating in a strike or subject to a lockout that is not prohibited by this Part;

(d) Deny to any employee any pension rights or benefits to which the employee would be entitled but for:

(i) The cessation of work by the **employee** as the result of a lockout or strike that is not prohibited by this Part; or

(ii) The dismissal of the **employee** contrary to this Part:

(d.1) Where the requirements of paragraphs 89(1)(a) to (d) have been met, cancel, or threaten to cancel a medical, dental, disability, life, or other insurance plan, whether administered by the **employer** or otherwise, that benefits **employees**, so long as the bargaining agent tenders or attempts to tender to the **employer** payments or premiums sufficient to continue the plan;

(d.2) Where the requirements of paragraphs 89(1)(a) to (d) have been met and the bargaining agent has tendered or attempted to tender to the **employer** payments or premiums sufficient to continue an insurance plan referred to in paragraph (d.1), deny or threaten to deny to any **employee** any benefits under the plan to which the **employee** was entitled before those requirements were met.

(e) Seek, by intimidation, threat of dismissal or any other kind of threat, by the imposition of a financial or other penalty or by any other means, to compel a person to refrain from becoming or to cease to be a member, officer or representative of a trade union or to refrain from:

(i) Testifying or otherwise participating in a proceeding under this Part;

(ii) Making a disclosure that the person may be required to make in a proceeding

under this Part; or

(iii) Making an application or filing a complaint under this Part;

(f) Suspend, discharge, or impose any financial or other penalty on a person employed by them, or take any other disciplinary action against such a person, by reason of that person having refused to perform an act that is prohibited by this Part; or

(g) Bargain collectively for the purpose of entering into a collective agreement or enter into a collective agreement with a trade union in respect of a bargaining unit, if another trade union is the bargaining agent for that bargaining unit. **Section 94(3).**

For more information, see:

- Employee Status Preserved **Section 3(2).**
- Arbitration **Section 36.1(2).**
- Division XIV Unjust Dismissal.

Further details on the Canada Labour Code can be found at Laws.justice.gc.ca.