

Constructive Dismissal Or Justified Demotion? Insight From The British Columbia Civil Resolution Tribunal



The recent British Columbia Civil Resolution Tribunal (“CRT”) decision in *Zaharia v Coast to Coast Traffic Solutions*¹ sheds light on what does (and does not) constitute constructive dismissal when an employee’s duties are subject to change.

Background

The employee was employed from March 7, 2022, until his resignation on September 2, 2022. He was hired as both a Traffic Control Person (“TCP”) and Lane Control Technician (“LCT”), with different hourly wages for each role. The employee was not guaranteed a set number of shifts in either role. Following a series of errors, the employer concluded that the employee was not fit for LCT duties, informing the employee that he would only working as a TCP moving forward. In response, the employee resigned immediately, claiming this decision effectively demoted him to solely work in a TCP role and he had been constructively dismissed.

C2C’s defense was straightforward: they argued that the employee’s resignation was voluntary and not a result of any forced or unlawful action by the company. They maintained that the employee was placed in positions suitable to his qualifications and experience and shifting him to solely hold the role of TCP was not a breach of the terms of his employment and did not constitute constructive dismissal.

Constructive Dismissal: The Issue at Hand

The central issue was whether the employee was constructively dismissed from C2C and, if so, what damages he was entitled to. Constructive dismissal occurs when an employer unilaterally makes a substantial or fundamental change to the terms and conditions of an employee’s terms and conditions of employment, creating a work environment that is so intolerable or significantly altered that it leaves the employee feeling they have no choice but to resign. In such cases, the employee is then given the option of either accepting the new terms or considering themselves as dismissed and suing for damages.²

In this case, the employee and C2C only had a verbal employment agreement; there was no written contract or other documentation specifying guaranteed hours in either of the two roles. While the employee most often worked as an LCT, he performed duties

both as a TCP and LCT prior to this change. Further, C2C continued to offer him shifts as a TCP following this change, indicating that he was not left with no choice but to resign.

Given these considerations, the CRT found that C2C's decision to assign the employee solely to TCP duties was not a fundamental breach of his employment. Therefore, the CRT concluded that the employee's resignation was voluntary and dismissed the employee's claim.

Key Takeaways for Employers

This case highlights the complexities and highly contextual nature of constructive dismissal claims, particularly where an employee may occupy multiple or varying roles. For such a claim to succeed, there must be clear evidence of a fundamental breach of the terms of employment by the employer. In this instance, the CRT found no such breach, emphasizing the fact that the employee's terms of employment had changed, but he was still offered work in the role he was hired for.

If you have questions about managing changes to an employee's duties, reach out to a member of McMillan's Labour & Employment Group.

Footnotes

1 *Zaharia v Coast to Coast Traffic Solutions*, 2024 BCCRT 774 (CanLII).

2 *Evans v Teamsters Local Union No. 31*, 2008 SCC 20 (CanLII) and *Fisher v Lakeland Mills Ltd.*, 2008 BCSC 42.

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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