Constructive Dismissal Scorecard



Many companies are calling employees back to work; but in many cases, the new terms of employment are less favourable to the employee. **Key question:** What unfavourable changes amount to constructive dismissal? Although each case is different, court rulings provide context to guide your own decisions. Here are 3 recent rulings that may help.

20% Pay Cut Is Constructive Dismissal

In addition to a 10% salary reduction under a company-wide Cost Reduction Program, new management suspended the 6% of a senior manager's salary that it contributed to her pension, along with her 2019 bonus. The employer cited cases holding that cuts between 14% and 17% weren't constructive dismissal, but the Alberta court said that after factoring in the lost bonus, her total pay reduction was actually 20%, enough to cross the constructive dismissal line and get the manager damages of $107,247 [*Kosteckyj v Paramount Resources Ltd*, 2021 ABQB 225 (CanLII), March 24, 2021].

Transfer from Vancouver to Burnaby Is Not Constructive Dismissal

After 34 years of working for the North Vancouver commercial diving business her husband founded, an office manager was transferred to Burnaby. The manager felt like a fish out of water. Working from home didn't help. Rather than negotiating a solution, she walked out of the meeting and sued for constructive dismissal. The BC Court of Appeal upheld dismissal of the case. Companies have broad discretion to transfer personnel, especially when the move is part of a general restructuring, as was the situation in this case. Nor did the evidence support the manager's claim that the company essentially stripped her of her duties [*Costello v. ITB Marine Group Ltd*., 2021 BCCA 154 (CanLII), April 16, 2021].

Making Veteran Teacher's Employment Probationary Is Constructive Dismissal

After 18 years of faithful employment, a teacher was compelled to sign a new contract imposing a 3-month probationary period and giving the school the right to terminate her without cause and without notice. When she objected, the manager told her to "tell your lawyer to contact our lawyer." The Alberta court ruled that the teacher was constructively dismissed. The fact that other teachers signed the deal wasn't so much a defence as an indication of the "unequal bargaining power" the school wielded

over its employees. **The price tag:** Nearly $30,000 in termination notice and aggravated damages [*Koutsikaloudis v Maple Leaf Academy Ltd*, 2021 ABPC 136 (CanLII), April 29, 2021].