

Employer's Reasonable Safety Steps Defeat Constructive Dismissal Claim



While employers are held to a high standard in meeting their occupational health and safety obligations, the courts do not require them to grant every request made by an employee. In [Poesl v Sharon Veterinary Clinic Professional Corporation \[Poesl\]](#), the Ontario Superior Court of Justice (“ONSC”) found that an employee resigned by refusing to return to work unless the employer accommodated her specific request concerning a client. *Poesl* highlights the limits of employers’ legal obligations to provide a safe and respectful workplace.

BACKGROUND

The employer, a veterinary clinic, lost a client’s cat while it was under the clinic’s care. In response, the client made threatening comments toward staff. Although the plaintiff employee was not personally targeted, she later went on medical leave and provided a doctor’s note linking her health issues to the threats.

The employee indicated that she would not return to work unless the clinic formally ended its relationship with the client in writing. The employer took several steps to protect staff from the client’s threats but refused to issue the formal letter, concerned it might escalate the client’s behaviour.

While the employer permitted the employee to remain on medical leave, it requested an anticipated return-to-work date. The employee did not respond for a month and later, through legal counsel, asserted constructive dismissal.

DECISION

Reasonable steps to protect the employee

Under the *Occupational Health and Safety Act* (“OHS”), Ontario employers are required to take every precaution reasonable in the circumstances to protect their workers. The ONSC found that the employer responded reasonably to the client’s threatening comments, including by:

- contacting police;
- contacting the security alarm company and requesting immediate police response if the alarm was triggered;
- directing the client not to contact the clinic or its staff;

- instructing staff not to serve the client and marking the file “Absolutely no service”; and
- sending a letter to the client reiterating that staff were uncomfortable with his comments and referencing the police involvement.

The employee argued that her refusal to return to work was reasonable because the employer declined to send a termination letter to the client. The ONSC disagreed, characterizing her demand as “unreasonable” and “unnecessary.” In support of this finding, the Court noted that she had continued working at the clinic for two weeks after the client made the threatening comments.

Resignation

The ONSC concluded that the employee resigned and that her employment was not terminated by the employer.

The employee argued that her employment was constructively dismissed on two grounds: the employer’s refusal to send a letter terminating the client relationship, and the employer’s request that she return her office keys.

The Court rejected both arguments. Since the employer had appropriately addressed the safety issues, it was not required to comply with the employee’s specific demand. Further, while a request to return keys can, in some circumstances, support a constructive dismissal finding, this request was reasonable given the employee’s refusal to return to work.

TAKEAWAYS FOR EMPLOYERS

Employers must take every reasonable precaution to protect their workers. However, *Poesl* confirms that an employer is not necessarily required to grant an employee’s specific request where it has already taken other reasonable steps to ensure workplace safety.

- **OHSA duties are real, but not limitless:** Ontario employers are legally obligated to protect workers from harassment, including by clients or other third parties. For more on the significant financial consequences of failing to act, see our [blog](#) on *Stride v Syra Group et al.*
- **Clear and unequivocal resignation:** In *Poesl*, the employee resigned by refusing to return to work. However, employers should be cautious in similar scenarios, as courts typically require a clear and unequivocal resignation. See our [blog](#) on *Gent v Askanda Business Services Ltd.* for more on resignation communications.
- **Medical evidence matters:** The employee’s failure to produce supporting medical documentation undermined both her accommodation request (that she could not return to work) and her claim for damages under the *Human Rights Code*. Employers are entitled to certain medical information, such as an employee’s work-related limitations, as part of their duty to accommodate.

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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