

The constructive dismissal conundrum



One of the issues plaguing lawyers in giving advice to employees whose terms and conditions of employment have been altered is whether the employee should withdraw services and claim constructive dismissal or keep working while looking for new employment.

Case law suggests that if it is not humiliating or embarrassing for a constructively dismissed employee to keep working he or she should do so while looking for other employment (to mitigate damages). An employee who withdraws services faces the risk of the employer arguing that the employee failed to mitigate damages by in essence choosing to become unemployed.

In a recent case, the British Columbia Court of Appeal (*Piron v. Dominion Masonry LTD*) held that an employee who withdrew his services over a dispute concerning bonus entitlement was entitled to do so. It rejected the employer's argument that the withdrawal of services was unwarranted and was therefore a failure to mitigate damages.

The evidence supporting the decision to withdraw services was some rather blunt exchanges between the employer and employee.

The case illustrates that humiliation by a contractual change is not an essential element of the decision to withdraw services. Where the relationship is strained by words or conduct an employee may be justified in withdrawing services.

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