

Helpful Guide to Understanding What Constitutes as a Constructive Dismissal Situation



Modification to the terms of an employee's compensation, position, duties, or other aspects of the employment relationship may give an employee the right to resign and bring suit for constructive dismissal. As decided by the Supreme Court of Canada in the precedent case of *Farber v. Royal Trust Company*, [1997] 1 S.C.R. 846, the legal test as to whether the modification has crossed the line from acceptable to unacceptable involves considering from an objective viewpoint of whether a reasonable person in the same circumstances of the employee would find the modifications unreasonable and/or unfair. Specifically, the Supreme Court stated:

... each constructive dismissal case must be decided on its own facts, since the specific features of each employment contract and each situation must be taken into account to determine whether the essential terms of the contract have been substantially changed.

Subsequently, the Ontario Court of Appeal further iterated and added additional clarity to the *Farber* precedent within the case of *Renolds v. Innopac Inc.*, [1998 CanLII 3558](#) where it was stated:



The latest decision of the Supreme Court of Canada on the question of constructive dismissal, *Farber v. Royal Trust Co.*, [1997] 1 S.C.R. 846, 145 D.L.R. (4th) 1, was released the same day as the hearing of this appeal. It does not, in my view, change the law of constructive dismissal, but it does articulate clearly the question which the trial judge must answer on the facts of the case. At pp. 858-59 of his reasons, concurred in by all members of the court sitting on the appeal, Gonthier J. sets out the concept of constructive dismissal as it is understood in civil law and defines common law constructive dismissal in the same manner. He states:

Where an employer decides unilaterally to make substantial changes to the essential terms of an employee's contract of employment and the employee does not agree to the changes and leaves his or her job, the employee has not resigned, but has been dismissed. Since the employer has not formally dismissed the employee, this is referred to as "constructive dismissal". By unilaterally seeking to make substantial changes to the essential terms of the employment contract, the employer is ceasing to meet its obligations and is therefore terminating the contract.

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To reach the conclusion that an employee has been constructively dismissed, the court must therefore determine whether the unilateral changes imposed by the employer substantially altered the essential terms of the employee's contract of employment. For this purpose, the judge must ask whether, at the time the offer was made, a reasonable person in the same situation as the employee would have felt that the essential terms of the employment contract were being substantially changed. The fact that the employee may have been prepared to accept some of the changes is not conclusive, because there might be other reasons for the employee's willingness to accept less than what he or she was entitled to have.



Moreover, for the employment contract to be resiliated, it is not necessary for the employer to have intended to force the employee to leave his or her employment or to have been acting in bad faith when making substantial changes to the contract's essential terms.

Similar to liability arising in [wrongful dismissal](#), in constructive dismissal cases, the employer owes compensation to the employee whether in accordance to the *Employment Standards Act, 2000*, [S.O. 2000, Chapter 41](#) or the common law upon consideration of the *Bardal* factors.

The modifications to an employment arrangement that may be substantial enough to give rise to constructive dismissal circumstances are extension; however, a few key and commonplace concerns include:

- ▷ The [geographic relocation](#) of the employee;
- ▷ The [significant increase or reduction in the amount of work hours or usual hours](#); and
- ▷ The [failure to protect an employee from harassment](#) or [workplace bullying](#).

Harassing By Employer, general damage and punitive damage

Whereas an employer that engages in intimidating, harassing, insulting, or embarrassing, behaviour gives cause to an employee to resign from employment and bring a claim for constructive dismissal, the employee may also be entitled to general damages for stress injury as well as punitive damages if necessary to denounce and deter further similar behaviour; *Boucher v. Wal-Mart Canada Corp.*, [2014 ONCA 419](#).

Lay Off, requires previous negotiated contract provision

Many employers presume that a general right or statutory right to lay off an employee exists. This is inaccurate as a lay off, unless expressly permitted to do so within a valid and enforceable employment agreement, is a form of constructive dismissal; *Martellacci v. CFC/INX Ltd.*, [1997 CanLII 12327](#) at paragraph 30; *McLean v. The Raywal Limited Partnership*, [2011 ONSC 7330](#) at paragraph 20 and 21; *Ellis v. Artsmarketing Services Inc.*, [2017 CanLII 51563](#) at paragraph 50 to 54.