

Case In Point

Court Finds Employer Took Appropriate Steps to Change Terms of Employment – No Constructive Dismissal

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In [*Lancia v. Park Dentistry*](#), the Ontario Superior Court found that an employer who wished to change the terms of employment did not constructively dismiss a long-term employee because she was provided with 18 months' working notice as well as a new contract with a signing bonus.

The plaintiff worked as dental hygienist for the defendant and its predecessor from 1997 to 2016. In 2014, on the advice of legal counsel, the defendant began the process of transitioning his employees to written employment contracts. The practice of paying vacation pay before the pay was earned was also discontinued: vacation pay would now be calculated as a percentage of wages actually earned, pursuant to the *Employment Standards Act, 2000*.

To institute these changes, the defendant terminated the plaintiff's employment and made an offer of continued employment on terms set out in the new written contract. She was provided with 18 months' working notice and a \$2,000.00 signing bonus for executing the new contract. Despite being provided with over a month to consider the new contract, the plaintiff signed and returned the new contract two days later. She did not raise any objection to its terms.

The plaintiff resigned almost 1.5 years later and subsequently claimed that she was constructively dismissed due to the reduction in her vacation entitlement. She also claimed she was the subject of sexual harassment and a poisoned work environment. The defendant argued that the plaintiff quit her position and all obligations with respect to her employment contract had been fulfilled.

The Court found that the plaintiff's delay in bringing a constructive dismissal claim was illuminating. It stated that if an employee takes the position that an alleged breach of contract is a constructive dismissal, "they must communicate that decision to the employer in a reasonable time." The plaintiff failed to act within a reasonable time as her complaint came 13 months after she resigned.

Consistent with the prevailing jurisprudence, the Court recognized that an "employer has the right to impose fundamental changes to an employment contract" and if the same is carried out, they are "required to give reasonable notice of the change to the employee." The defendant did exactly this.

The Court rejected the plaintiff's assertion that the new contract was lacking consideration. It found

instead that the signing bonus was valid consideration although noted that technically, no consideration was even required to make the new contract enforceable since the plaintiff's old employment was terminated with sufficient notice. The Court indicated that it "is settled law that an employer may transition an employee to a new contract without consideration by providing reasonable notice." It also found that the plaintiff entered into the new contract freely, without duress and with ample time to consider the terms.

The Court systematically highlighted the deficiencies in the plaintiff's evidence in connection to the allegations of a poisoned work environment and sexual harassment. The onus for establishing a poisoned work environment rests with the employee and the test is an objective one. Among other things, the Court found that the plaintiff took an innocent comment made by the defendant and "manipulated it to fit her claim of a poisoned work environment." The employees considered each other a "second family" and collectively engaged in banter. The Court did not consider the defendant's "conduct, taken as a whole, to be needlessly provocative, harassing or demeaning. The corporate atmosphere was far from toxic." The plaintiff therefore failed to discharge her onus that she was subject to sexual harassment or a poisoned environment.

The plaintiff was found to have unilaterally terminated her employment relationship. Even if she was constructively dismissed, she did not suffer any damages. She had continued to work for the defendant past the reasonable notice period and in any event, she failed to mitigate as she only commenced her job search seven months after resignation. Summary judgment was granted in favour of the defendant, but for \$3,763 owing for vacation pay wrongfully deducted from the plaintiff's salary.

The Court's ruling is helpful to employers as it outlines the standards that employers should meet when making changes to the terms of employment. Further, especially in the current legal climate, the decision illustrates the objective standards required to establish sexual harassment and a poisoned work environment.