

Case In Point

Superior Court Finds Ontario's IDEL Regulation Does Not Preclude Constructive Dismissal Claim at Common Law

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The Ontario Superior Court recently considered the interaction of the [Infectious Disease Emergency Leave Regulation](#) (IDEL Regulation) made under the *Employment Standards Act, 2000* (ESA) and a claim for constructive dismissal at common law. In [Coutinho v. Ocular Health Centre Ltd.](#), the Court dismissed the employer's position that the IDEL Regulation constituted a defence to a civil claim of constructive dismissal.

In this case, the plaintiff worked at the defendant eye clinic (Ocular) as an ophthalmic technician and later as an office manager. The ophthalmologists practising at the eye clinic were engaged in a dispute over various corporate and business issues. In the midst of this dispute, on May 1, 2020, the plaintiff was told not to attend work and that she would continue to be paid. On May 29, 2020, the plaintiff was advised she was being placed on temporary lay-off due to closure of the clinic.

On June 1, 2020, only two days later, the plaintiff commenced an action against Ocular, claiming damages for constructive dismissal along with punitive or aggravated damages. Shortly after, she obtained new employment at another eye clinic.

Ocular plead that the plaintiff had not been constructively dismissed because her hours of work were temporarily reduced or eliminated for "reasons related" to the COVID-19 health crisis. Section 7 of the IDEL Regulation provides that if an employer temporarily reduces or eliminates an employee's hours of work or wages by the employer for reasons related COVID-19 during the prescribed "COVID-19 period," this will not constitute a constructive dismissal. Relying on the IDEL Regulation, Ocular argued that the plaintiff was deemed to be on emergency leave and that the temporary elimination of her employment duties and work hours did not amount to constructive dismissal. Ocular moved for summary judgment on this basis.

Finding it unnecessary to determine whether the plaintiff's temporary lay-off had been for "reasons related" to COVID-19, the Court concluded there was no genuine issue requiring trial with respect to Ocular's defence.

The Court distinguished between constructive dismissal under the ESA and constructive dismissal at common law. It found that while the IDEL Regulation precluded a claim for constructive dismissal under the ESA, it did not take away (or otherwise affect) the plaintiff's ability to pursue a claim for constructive dismissal at common law.

The Court found that the scope of s. 7 of the IDEL Regulation should be seen in light of s. 8(1) of the ESA, which provides that “no civil remedy of an employee against his or her employer is affected by this Act.” In support of this interpretation, the Court considered an online publication of the Ontario Ministry of Labour, Training and Skills Development which stated that the IDEL Regulation only affected what constituted constructive dismissal under the ESA, not at common law.

On this basis, the Court dismissed Ocular’s motion for summary judgment. It found that the plaintiff was entitled to treat Ocular’s unilateral imposition of the layoff as a termination of her employment contract at common law and had an immediate right to sue for constructive dismissal, though the Court noted that the plaintiff had fully mitigated her common law damages. The Court ordered the employer to provide the plaintiff with her statutory termination entitlements under the ESA. The remaining issue of whether the employer had just cause for termination was remitted to trial.

This decision represents the first time that an Ontario court has considered this issue, and the issue has therefore not been addressed by an appellate court in Ontario. This decision, albeit in the specific context of a summary judgment motion, underscores the challenges that employers face in navigating statutory and common law principles while dealing with the economic realities of temporary layoffs during the COVID-19 pandemic.