

Case In Point

Appellate Court Overturns WSIAT Decision That Held Constructive Dismissal Claim Barred by WSIA

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In [Morningstar v. WSIAT](#) (Morningstar), the Divisional Court partially overturned a decision of the Workplace Safety and Insurance Appeals Tribunal (WSIAT) that had barred a constructive dismissal claim which was based on alleged workplace harassment from proceeding in Superior Court.

The WSIAT had found that the claim fell within the entitlement for chronic mental stress provision in the *Workplace Safety and Insurance Act, 1997* (WSIA) and therefore a civil action was barred by virtue of section 31 of the WSIA (which prevents workers from suing their employer for workplace injuries). The Court disagreed, holding that the WSIAT's reasons were unreasonable and flawed, and that it erred in linking the facts of the case only to a workplace injury while ignoring a viable claim for constructive dismissal, which was separate and apart from any claim of a workplace injury.

The judicial review decision arose out of an action by the applicant against her former employer. The applicant alleged she had been constructively dismissed, that her employer had committed *Occupational Health and Safety Act* violations, that she had been subject to the tort of harassment, and that she was entitled to punitive, aggravated and/or moral damages. The applicant alleged that ongoing workplace harassment and bullying caused her to suffer from mental stress, which led to her being incapable of returning to work. She resigned from her employment and filed both a human rights application as well as a constructive dismissal claim. The employer brought an application under section 31 of the WSIA, claiming that, as the applicant's constructive dismissal claim was based on harassment, it fell under the WSIA and therefore it was barred and jurisdiction lay under the WSIA.

In its decision granting the employer's application, the WSIAT noted that while the right to bring an action for wrongful dismissal was generally not removed by the WSIA, the exception to this rule applied in that case given that the "circumstances of the wrongful dismissal claim are inextricably linked to the workplace injury."

In a reconsideration decision, WSIAT affirmed the finding in the original decision. A full discussion of the original WSIAT decision can be found in our previous [publication](#).

On judicial review, the Divisional Court partially overturned the WSIAT's decision.

The Court reviewed the purpose of the "historic trade-off" in the enactment of the workers' compensation legislation, as reflected in section 31 of the WSIA, and found that the proper scope of section 31 was to identify and prohibit personal injury claims disguised as other causes of action that would otherwise frustrate the historic trade-off. Importantly, the Court stated that "*bona fide* claims for constructive/wrongful dismissal should be permitted to proceed, as they are not tort actions and are distinct from personal injury claims, and attract damages for which the Act offers no compensation."

The Court found that the WSIAT had failed to consider that the employer's alleged treatment of the applicant, in addition to harassment, could also be construed as an intention to terminate the employment contract (i.e. a constructive dismissal).

The Court also held that the WSIAT had failed to consider that a harassment claim focuses on a different legal relationship than a wrongful dismissal claim, the latter of which requires compensation for damages not within the purview of the WSIA.

Consequently, while the Court found that the claim for harassment was statute-barred, the applicant's claim for constructive dismissal and aggravated moral and punitive damages could proceed.

In overturning the WSIAT decision, the Court narrowed the spectrum of claims that are statute-barred under the WSIA. It is now more difficult for employers to successfully bring a section 31 application claiming that a constructive dismissal claim based on workplace harassment should be statute-barred in its entirety.

With thanks to Quinn Brown, 2021-2022 Hicks Morley articling student, for her assistance with this article.

*****Editor's Note: On January 20, 2022, the Ontario Court of Appeal denied leave to appeal this decision.***