

## THE LAW OF CONSTRUCTIVE DISMISSAL

In the leading case, *Farber v. Royal Trust Co.*, [1997] 1 SCR 846 (CanLII), the Supreme Court of Canada defined the concept of constructive dismissal as follows: "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. The employee can then treat the contract as resiliated for breach and can leave. In such circumstances, the employee is entitled to compensation in lieu of notice and, where appropriate, damages."

But not all changes to an employee's terms and conditions of employment amount to constructive dismissal. In the recent case of *Gillis v. Sobeys*, 2011 NSSC 443 (CanLII), the Nova Scotia Supreme Court held that an employee with a head office managerial position resigned and was not constructively dismissed when she declined an alternative position of in-store assistant manager offered by the employer after it eliminated her position. Finding that the employee's response to the elimination of her position was "emotional rather than pragmatic" and led her to mistakenly perceive the offer as a demotion rather than a sideways transfer, the judge emphasized that "not every change in the terms of employment constitutes constructive dismissal" and ruled that the slightly lower salary, return to the store floor, and child care concerns in relation to the position's hours were not sufficient to warrant her refusal to accept the position and thus the change could not be deemed to be a constructive dismissal.

Employees must be very cautious in quitting their job alleging constructive dismissal. Legal advice should be sought before any such decision is made. It is a complex area of law that requires an assessment of the extent to which job duties and functions are being altered.

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