

The Employer Employee Contract and Constructive Dismissal

Workplace bullying and workplace harassment are serious issues that affect employees and employers throughout Alberta and across industries, sectors, and professions. Being the target of workplace bullying and workplace harassment can leave an employee feeling lost, anxious and without support, particularly where management does little to investigate or prevent the bullying or harassment or where management is responsible for the bullying or harassing behaviour itself. Repeated and continual harassment and bullying can also have serious and traumatic effects on an employee's mental health, and can lead to leaves of absence, or in serious cases, the employee's resignation. When this occurs, employees are often left wondering what recourse they have against their employer for either failing to act when incidents of bullying or harassment were brought to their attention, or where management facilitated the bullying and/or harassing behaviour?

The relationship between employee and employer is at its core, a contractual one. Once an employment contract has been formed, whether in writing or orally, neither party has the right to change a significant term of that contract, unless both parties agree. In some cases, a unilateral change by an employer to an employee's position, responsibilities, compensation, or other terms of employment, can give rise to a potential claim for constructive dismissal. A non-unionized employee is constructively dismissed if one of the following legal tests is satisfied:

1. **Single unilateral change:** This test is satisfied where an employer makes a unilateral change that breaches an express or implied term of the employment contract, and this breach substantially alters an essential term of employment. To determine the second part of this test, the court will consider whether a reasonable person in the same situation as the employee would have believed that an essential term of employment was substantially changed.
2. **Series of acts:** A course of conduct by the employer, rather than a single unilateral change, that shows the employer no longer intends to be bound by the employment contract.

In the context of workplace bullying and harassment, Canadian Courts have recognized that a poisoned or toxic work environment can amount to constructive dismissal and entitle an employee to a claim for significant damages. There are two main approaches in asserting a claim of this kind. The first approach asserts that there is an implied term in every employment contract that an employee will be treated with civility, decency, respect, and dignity. If that implied term is breached, the employee may claim that they have been constructively dismissed. The second approach requires an analysis of the conduct of the employer, and specifically whether the conduct of the employer is so intolerable that a reasonable person should not be expected to carry on in their employment. If the employer's conduct is found to be so far outside the boundaries of reasonable behaviour that the employee finds continued employment to be intolerable, a claim for constructive dismissal may be available to the employee. In certain circumstances, an employer can be liable for the actions of its employees even when they are not managers.

At Donna Purcell QC Law, our employment lawyers have represented Alberta employees and employers in constructive dismissal claims brought based on a toxic and hostile work environment. In addition, we advise employers with respect to managing workplace bullying and harassment investigations, drafting robust anti-bullying and harassment policies and procedures, and educating employers on bullying and

harassment mitigation strategies. For more information, and to set up a consultation, please contact the following or visit our website below.

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