



e2r Alert!

Ontario Courts Disagree About Constructive Dismissal

Recently we sent out an [Alert](#) outlining how the current Infectious Disease Emergency Leave ("IDEL") could be considered constructive dismissal at common law.

Well there appears to be a disagreement about whether that is in fact the case. In the just released *Taylor v. Hanley Hospitality Inc.* decision (the "Hanley Hospitality Decision"), Justice Ferguson held that placing an employee on IDEL was not constructive dismissal.

The Hanley Hospitality Decision is in direct contrast to the recently reported *Coutinho v. Ocular Health Centre Ltd.* (the "Coutinho Decision"), and Justice Ferguson addressed that conflict by holding that the Coutinho Decision was 'wrong at law' because it did not consider the context in which the IDEL was created (i.e. to address the mandatory closure of businesses by the government and the pandemic generally) or the rules of statutory interpretation (i.e. employment statutes can displace common law rights, like constructive dismissal).

While this is certainly good news for employers, the landscape remains uncertain. In particular, both cases arose out of the same level of court, and therefore neither holds precedent over the other. Although the reasoning in the Hanley Hospitality decision appears more compelling, judges will be free to follow whatever reasoning they prefer.

So, in the end, we are left with two conflicting decisions and the issue remains unresolved, albeit it seems to be trending that IDEL is not a constructive dismissal at common law.

If you have any questions regarding the above, please do not hesitate to reach out to speak with an e2r™ Advisor.