

When a resignation is too good to be true...

Sometimes a resignation is too good to be true. In order for a resignation to be valid, it must be clear and unequivocal, and the words or actions need to be viewed in context. If the circumstances surrounding the resignation are suspect, a court may find that an employee has not resigned and is entitled to reasonable notice upon termination.

In *Johal v. Simmons da Silva LLP*, a senior family law clerk who had been employed by the law firm for 27 years, was called into a meeting and advised of an upcoming restructuring. The employee, upset by news, left work early. The following day, she removed her personal belongings from the office and returned her security pass. Neither party attempted to contact each other over the next 5 days, after which time the employer sent a notice to the employee claiming to accept her resignation. In response, the employee sent a letter asking to rescind her resignation.

The court found that the employee had not resigned from her employment and that the employer's refusal to allow her to rescind amounted to termination. In arriving at its decision, the court noted that: the employee was 62 years of age and likely did not have alternative employment at the time of the purported resignation; the employee was upset when she left; the employee did not provide written or verbal notice and had never threatened to resign in the past; and the resignation coincided with the employer's need to downsize.

As this case demonstrates, in certain cases it is incumbent on the employer to determine the employee's true intention to resign. For example, an employer may consider asking for further information when: the employee recently received upsetting news from the employer; the employee informs the employer he/she is resigning due to medical issues; and the employee uses phrases that can be easily misunderstood, such as "I am done" or "I am out of here". In any event,

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it is always a best practice to require an employee to confirm their resignation in writing.

In order to avoid a potentially expensive wrongful dismissal claim, if you are unsure about whether an employee has resigned, we recommend you contact e2r® to speak with an Advisor.

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70 The Esplanade, Suite 401, Toronto, Ontario M5E 1R2

📞 416-867-3093 📠 416-867-1434 📞 1-866-327-7657

