

## ***Is a Resignation Really a Resignation?***

In *Carroll v. Purcee Industrial Controls Ltd, 2017 ABQB 211*, the Court of Queen's Bench of Alberta (the "Court") recently decided whether requesting a severance package amounted to a resignation.

### **Background**

Mr. Carroll worked in sales and development for Purcee Industrial Controls Ltd (the "Company") for almost five (5) years in Calgary and overseas. There was no written employment contract between Mr. Carroll and the Company.

In 2012, business began to decline once a major project was near completion. The employment relationship began to deteriorate. As a result, Mr. Carroll tendered his resignation in writing and requested a fair severance package. The Company rejected his resignation and Mr. Carroll continued to work.

By May 2013, the relationship had not improved and Mr. Carroll advised the Company that he wished "to terminate employment on professional terms", and outlined his proposed terms of severance. Mr. Carroll's employment ended on June 2013, when the Company accepted his "resignation".

### **Did Mr. Carroll resign or was his employment terminated?**

At trial, Mr. Carroll claimed his employment was terminated without cause and he was entitled to damages in lieu of reasonable notice. The Company claimed Mr. Carroll voluntarily resigned from his employment.

As we have heard before, the Court said that an effective and binding resignation must be clear and unequivocal. In determining whether an employee has resigned, the Court applied a subjective and objective test: subjectively, did the employee intend to resign; and objectively, viewing all the circumstances, would a reasonable employer have understood that the employee had resigned.

The Court found that Mr. Carroll's resignation was not clear and unequivocal, but rather an invitation to discuss the terms of his termination. The Court also noted that it was clear that Mr. Carroll's resignations were all done from a place of upset and frustration and each time Mr. Carroll offered to resign his employment, the offer was coupled with an invitation to negotiate the terms of a severance package.

The Court concluded therefore that Mr. Carroll was dismissed without cause and entitled to damages.



## Takeaways

As this case and others emphasize, in certain cases where an employee's resignation is not clear and unequivocal, it is important for the employer to take steps to determine the employee's true intention to resign. Before accepting a resignation, such steps could entail further inquiries into the resignation and 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.

