

# Could I be entitled to severance even though I resigned?

ANDREA YU

NINE TO FIVE

## The question

I was a director at the same company for more than three decades and requested a new position as I needed a change. I was asked whether I was interested in a senior role in a nearby city [Toronto]. I was, but I would need relocation assistance as I was not willing to commute to the new location each day. After about seven months, I was told that I would not be provided relocation support. The company was so sure I would take the new role that they hired a replacement for the job I was still doing. I was also told that if I didn't take the new role they would reduce my job level. I was so shocked by the treatment that I resigned out of frustration. Do I have any legal rights to a severance package?

## The second answer

**George E. Cottrelle**  
*PartnerKeel Cottrelle LLP*  
Toronto

A resignation has very serious consequences, including loss of income, benefits and severance,

which in your case, would be substantial. In certain circumstances, a resignation may be withdrawn. To be enforceable, a resignation must be clear and unequivocal and the employer should have given you reasonable time to reconsider before accepting.

If your resignation was forced by the employer's actions constituting constructive dismissal, then you would retain your rights for severance, subject to some important considerations.

Constructive dismissal is never clear-cut, and depends on the facts. You requested a new position and were offered a senior role in Toronto, which was acceptable to you, provided you received compensation for relocation support, as you were not willing to commute.

Seven months later, the company unilaterally decided that you would be replaced in your role as director and transferred to the senior role in Toronto, with no relocation compensation, knowing you would not agree to this. Although the new role itself

had been acceptable, the question is whether the loss of your position which you held for 34 years, and the non-negotiable transfer to Toronto, without compensation, constituted constructive dismissal.

Location transfers alone, which are within a reasonable commuting distance, generally would not constitute constructive dismissal, absent other factors.

Employees who have been constructively dismissed have a duty to mitigate their damages. Your employer's actions were arbitrary and unreasonable and constituted constructive dismissal. However, you should have mitigated your damages by accepting the transfer and reserving all rights to claim damages. By resigning, you have forgone your ability to claim severance.

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[NineToFive@globeandmail.com](mailto:NineToFive@globeandmail.com)