

Member's Quarterly

Spring 2026 Edition

Feature

Misplacing the Remote

Recalling Remote Workers

Introduction

Employers across Canada have grappled with the challenges of bringing employees back into the office following the COVID-19 pandemic. Key questions for many employers include how to properly recall employees back into the office and when does refusal to return to the office amount to repudiation of the employment agreement? Two recent court decisions may provide guidance on the answers.

Byrd v Welcome Home Children's Residence Inc. (ON Small Claims)

The employee began working for the employer in April 2018. There was no written employment contract but the employee received several promotions. In May 2020, the employee's husband was posted to Europe and the employee and the employer agreed to an arrangement by which the employee would continue to work for the employer remotely from Europe. The arrangement was not reduced to writing.

For 13 months, the employee worked remotely for the employer without issue. In January 2022, a new manager was hired by the employer and shortly after, the employee was informed she was not permitted to work more than 15 hours per week and most of her responsibilities were assigned to the new manager and other staff.

The employee brought a constructive dismissal claim. The employer argued that it was an expectation of the employee's role that she supervises employees in-person and stated the employer looked forward to her physically returning to the workplace to continue her role.

The main issue before the Court in finding constructive dismissal was to determine the terms of the employee's contract of employment and, specifically, the terms under which she began to work remotely. The Court found the employee's remote work from Europe became an accepted part of her employment with the employer. The Court further found that a right to recall an employee from Europe is a fundamental term and requires clear and timely notice to the employee of the right to recall her to work in-person. So constructive dismissal was established.

The Court contrasted its decision with *Staley v Squirrel Systems of Canada Ltd.*, 2013 BCCA 201, where the employer confirmed in writing that the employee's remote work arrangement was temporary, so when the employer tried to recall the employee, there was no constructive dismissal.

Briggs v ABC Insurance Solutions Inc., 2024 BCSC 1918

In this decision, at the time of hiring, the employee was informed her role would be "hybrid", which she understood to mean she could work from her home or from the office. The employee lived in Mission, B.C. while the employer's office was in Langley.

The employer acknowledged there was a "work from home" policy in place at the time the employee was hired, but stated this was a temporary policy due to the COVID-19 pandemic. On March 17, 2023, the



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employer notified all employees, including the employee, that they were expected to return to working in the office full-time by September 2023.

The employee began commuting to the Langley office four times a week, starting in April 2023. However, on July 3, the employee notified her manager that it was not financially feasible for her to commute four days a week from Mission to Langley. She advised she would continue to work from her home office. The employee asked for further discussion on the issue, as well as the possibility of a commuting allowance. On July 9, 2023, the employer informed the employee that her employment had been terminated. The employer took the position that the employee had repudiated her employment contract by refusing to work in the office.

Repudiation requires an assessment of the context of an employee's refusal and a determination of whether the employee refused to perform an essential condition of the employment contract. In the July emails, she clearly and unequivocally stated she would continue to work, albeit remotely. At the time of the emails and termination, the employer did not prohibit working from home and working from home was not directly incompatible with the fundamental terms of employment. As a result, the Court found the employee had not repudiated the employment contract and that the employer terminated her employment.

Key Take-Aways for Employers

- 1. Written Documentation is key:** Where employee in-office attendance, changes to remote work arrangements, or changes to work location is required, ensure there is an explicit term allowing for such changes in the employment agreement, the remote work arrangement and/or the policies that govern remote work.
- 2. Recall the right way:** If there is no explicit term allowing for recall or relocation, a recall or relocation is a fundamental term of employment, so unilateral change could trigger constructive dismissal. It's vital that clear and sufficient notice should be given to the employee so they have a reasonable amount of time to comply.
- 3. Legal Advice:** When establishing a remote work arrangement or when considering recalling employees, employers should strongly consider discussing with legal counsel to reduce the risks of constructive dismissal or wrongful termination.

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