CITATION: MINKARIOUS v. 1788795 ONTARIO INC., 2025 ONSC 7245
DIVISIONAL COURT FILE NO.: DC-24-00000066-0000
SC-21-00000164-0000
DATE: 20251229

SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT

RE: JENNIFER MINKARIOUS, Respondent

-and-

1788795 ONTARIO INC. c.o.b. PHYSICAL RELEF HOME CARE, Appellant

BEFORE: Justice Spencer Nicholson

COUNSEL: J. Pitblado for the Respondent

R. Wozniak and K. Alexander for the Appellant

HEARD: October 27, 2025

On appeal from the decision of Deputy Justice D. Mailer of the Small Claims Court dated May 22, 2024.

REASONS FOR JUDGMENT

NICHOLSON J.:

[1] This is an appeal from an oral judgment of the Small Claims Court dated May 22, 2024. The Deputy Judge found that the Respondent, Jennifer Minkarious, had been constructively dismissed from her employment with the Appellant, 1788795 Ontario Inc. c.o.b. as Physical Relief Home Care, and awarded her damages for constructive dismissal of $14,800.00. He also awarded $20,000 pursuant to s. 46.1 of the *Ontario Human Rights Code*, R.S.O. 1990, c. H. 19 (the "*Code*").

[2] I will not recite the nine grounds of appeal that are relied upon by the Appellant. In my view, many of the grounds relate to impugning factual findings that the Deputy Judge was entitled to make and which are owed deference on appeal. In my view, the Appellant asks for me make findings of credibility and substitute those findings in place of those made by the Deputy Judge. Essentially, the Appellant argues that the Deputy Judge should have preferred its narrative.

[3] It is my view that the facts as found by the Deputy Judge did entitle Ms. Minkarious to damages for constructive dismissal and that the Deputy Judge applied the law appropriately to

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those facts. I also find that the Deputy Judge was entitled to award damages under the *Code* and that his assessment of damages is entitled to deference.

Facts:

[4] The Appellant is a small privately owned company that provides home care and nursing services. Its principal is Elaine Knight. Ms. Minkarious began working for the Appellant on September 1, 2015 as a personal support worker. She was promoted to the role of Executive Assistant in January of 2019. In that role, she worked directly for Ms. Knight. Her primary responsibility was completing paperwork necessary for the Appellant to charge its clients. This required her to track the number of active patients being serviced and the number of site visits completed.

[5] Ms. Minkarious earned $43,000 per year and worked approximately 40 hours per week.

[6] Ms. Minkarious received a negative job review in July of 2020. She testified that she had never had any previous formal job reviews in the past. Furthermore, in the summer of 2020, the Appellant became concerned that Ms. Minkarious had not been accurately recording site visits. According to the Appellant, Ms. Minkarious' errors resulted in the company not being paid for 40 site visits completed for the VON.

[7] Ms. Knight scheduled a meeting with the VON to address this issue on August 31, 2020. Ms. Minkarious phoned in sick the day before and the meeting was rescheduled to September 21, 2020.

[8] On the night before the September 21st meeting, Ms. Minkarious testified that she called Ms. Knight indicating that she could not attend because of a doctor's appointment and that she would be going on leave. She testified that Ms. Knight responded, "Fuck me". Ms. Knight testified that she did likely say "for Fuck's sakes".

[9] The next afternoon Ms. Minkarious produced a physician's note stating that she would be absent from work due to "medical reasons". In her testimony, Ms. Minkarious described having a "very, very heated" conversation with Ms. Knight about the medical note when she handed it in. Ms. Knight insisted that she attend the meeting with the VON. According to Ms. Minkarious, Ms. Knight described that she was on "thin ice". Ms. Minkarious maintained that her medical leave prohibited her from performing her work duties, including attending the meeting.

[10] Accordingly, Ms. Minkarious' medical leave commenced on September 21, 2020. However, she testified that Ms. Knight sent her an excessive number of work related texts while she was on leave. Those texts were filed with the court and several of Ms. Knight's texts are adversarial in nature.

[11] Ms. Knight went to Ms. Minkarious' apartment on September 22, 2020. Ms. Knight characterized the visit as necessary to retrieve the company issued cellphone because it had not

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been returned despite it being requested. This was a different phone from the VON phone which had been turned in the day prior.

[12] It is this visit that figured prominently in the Deputy Judge's decision.

[13] At trial, Ms. Minkarious described that Ms. Knight arrived unexpected at her apartment door. Ms. Minkarious described that Ms. Knight opened the door fully and walked past her, uninvited. Ms. Knight demanded her work place cellphone and was asking about Ms. Minkarious' medical leave. Ms. Minkarious described that Ms. Knight tried to grab the cellphone from her. Ms. Minkarious wanted to remove personal information from the cellphone using her laptop computer and started to go into her bedroom to retrieve the computer. Ms. Knight told her she could not leave the room with the phone. However, Ms. Minkarious did so and began downloading her personal information with Ms. Knight "hovering" above her. It was taking so long that Ms. Minkarious simply decided to perform a "factory reset" and delete her information from it. She gave Ms. Knight the phone. Ms. Minkarious testified that Ms. Knight had parked her vehicle to box in Ms. Minkarious' vehicle. Ms. Minkarious testified how the visit at her home made her very upset.

[14] Ms. Knight characterized the visit quite differently. She denied boxing in Ms. Minkarious' vehicle, stating that she did not want to take a tenant's parking spot and often parked there for short visits. In her testimony, the visit was non-confrontational. She simply entered the apartment when Ms. Minkarious opened her door and held her dog back. According to Ms. Knight, Ms. Minkarious seemed "fine". She did admit that she seemed upset when she asked her for her work phone. Ms. Knight denied that she raised her voice. This was refuted by Ms. Minkarious' neighbour who testified that she heard their voices from her upstairs apartment. The same neighbour took photos of the location of Ms. Knight's parked vehicle.

[15] The plaintiff led evidence that in the days that followed this meeting, Ms. Knight sent an email threatening legal actions if the plaintiff slandered the company. Ms. Knight also wrote "what did all the tests show?" and "so they still haven't found out what's wrong with you?". The latter query was repeated again two hours later.

[16] On November 20, 2020, another employee was promoted to a position over the plaintiff. Ms. Knight explained that it was necessary to do so to continue administering the work.

[17] The plaintiff testified that from the time she went on medical leave, she felt pressured by Ms. Knight to either come back early or quit. She no longer felt safe or comfortable at work.

[18] The plaintiff recounted receiving a phone call from Ms. Knight while she was grocery shopping in which Ms. Knight demanded information about when she was returning from her medical leave. This was very upsetting to the plaintiff. Ms. Minkarious' friend, who was with her in the grocery store, testified about this event at trial and the visible impact it had upon the plaintiff.

[19] Ms. Knight testified that her queries into Ms. Minkarious' health were necessary because she had to ensure that she had sufficient staff for the winter. She does admit, however, to having

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become frustrated, and hurt, by Ms. Minkarious' refusal to assist her in clearing up the issue with the VON. She also never heard anything further from the plaintiff about her possible return to work after November 19, 2020. The first time she definitively learned that Ms. Minkarious would not be returning to work is when she was served with the Statement of Claim in March of 2021.

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[20] Ms. Minkarious never informed her that she was resigning from her employment or that she was quitting because she was mistreated at work.

[21] Ms. Knight points out that Ms. Minkarious applied for admission into Conestoga College's Business Administration Program in September of 2020 and accepted an offer of admission on September 29, 2020. She ultimately started her studies in January of 2021 on a full time basis. Ms. Knight did not learn of that until the lawsuit as Ms. Minkarious never told her about it.

[22] Ms. Minkarious testified that despite applying and accepting a position at Conestoga in September of 2020, she had not made up her mind whether or not to attend.

Standard of Review:

[23] A trial judge's findings of fact are entitled to deference and can only be overturned on the basis of palpable and overriding error. The standard of correctness applies to questions of law. Questions of mixed fact and law fall within a spectrum. An exercise of discretion is also entitled to deference, unless the judge exercised his or her discretion on the wrong principles or "unless the decision is so clearly wrong as to amount to an injustice" (see: *Telilawala v. Sandhu*, 2019 ONSC 2385, at para. 8). Furthermore, a high level of deference is owed to a trial judge with respect to findings of credibility (see: *Palac v. Coppola*, 2011 ONSC 623 at para. 11).

[24] It should also be noted that an appellate court cannot interfere with a damages award simply because it would have come to a different conclusion (see: *Woelk v. Halvorsen*, 1980 CanLII 17 (SCC), [1980] 2 S.C.R. 430, at p. 435).

[25] Additional considerations apply to decisions of the Small Claims Court. In *Maple Ridge Community Management Ltd. v. Peel Condominium Corporation No. 231*, 2015 ONCA, the Court reiterated that the Small Claims Court is mandated to "hear and determine in a summary way all questions of law and fact and may make such orders as is considered just and agreeable to good conscience". At para. 35, the Court described as follows:

> [35] Reasons from the Small Claims Court must be sufficiently clear to permit judicial review on appeal. They must explain to the litigants what has been decided and why: *Doerr v. Sterling Paralegal*, 2014 ONSC 2335, at paras. 17-19. However, appellate consideration of Small Claims Court reasons must recognize the informal nature of that court, as well as the volume of cases it handles and its statutory mandate to deal with these cases efficiently. In short, in assessing the adequacy of the reasons, context matters: *Massoundinia v. Volfson*, 2013 ONCA 29, at para. 9. Just as oral reasons will not necessarily be as detailed as written reasons, reasons from the Small

> Claims Court will not always be as thorough as those in Superior Court decisions. Failing to take the Small Claims Court context into account only serves to restrict access to justice by unnecessarily imparting formality and delay into a legal process that is designed to be informal and efficient.

Did the Deputy Judge Err in Finding that Ms. Minkarious was Constructively Dismissed?:

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[26] The Supreme Court of Canada, in *Potter v. New Brunswick Legal Aid Services Commission*, 2015 SCC 12, at paras. 32-33, described constructive dismissal as arising where the employer's conduct evinces an intention to no longer be bound by the contract. The Court identified two separate branches of such conduct. The first is where the employer has made a unilateral change to an essential term of the employment contract. The second instance is where there are a "series of acts by the employer that evidence an intention to no longer be bound by the terms of the contract". This can occur where the employer's treatment of the employee makes continued employment intolerable.

[27] At para. 42 of *Potter, supra*, the Court frames the test as follows: would the employer's conduct, when viewed in the light of all the circumstances, lead a reasonable person to conclude that the employer no longer intended to be bound by the terms of the contract. The focus is on whether a course of conduct pursued by the employer "evinces an intention no longer to be bound by the contract". This can include circumstances where the workplace is toxic or "poisoned".

[28] Both parties on this appeal, and the Appellant at trial, relied heavily on *Persaud v. Telus Corporation*, 2016 ONSC 1577, affirmed by 2017 ONCA 479. Glustein J., the trial judge, in that case, described, at paras. 47-48, that a poisoned work environment can lead to a claim of constructive dismissal. A plaintiff must establish serious wrongful behaviour that creates a hostile or intolerable work environment. Unless there is a particularly egregious stand-alone incident, the behaviour must be persistent or repeated. The test is an objective one and the onus is upon the employee.

[29] In the case before me, it is clear from reviewing the oral Reasons of the Deputy Judge that he found that in the summer of 2020, the plaintiff was experiencing considerable stress. He notes that she was dealing with COVID, a negative workplace evaluation, and was being "pestered" with respect to a workplace error that she felt she was being unfairly blamed for. He notes that she suffered from significant weight loss and had difficulty coping. These findings were available to him on the evidence.

[30] The Deputy Judge found that Ms. Knight's unannounced visit to Ms. Minkarious' apartment was "inappropriate", a finding with which I entirely agree. After setting out the two considerably different narratives of this visit, the Deputy Judge preferred and accepted the evidence of Ms. Minkarious and her neighbour over the evidence of Ms. Knight.

[31] He also found that after the unannounced visit, Ms. Knight "scoured" Ms. Minkarious' work phone for personal information, including a personal text that was between Ms. Minkarious and her sister. I note remarkably that the Appellant relied heavily on this personal message at trial as evidence that Ms. Minkarious was not happy about her job without considering that it was highly

inappropriate for Ms. Knight to have viewed and confronted Ms. Minkarious about this message at all.

[32] In his Reasons, the Deputy Judge recited at length from a text message sent by Ms. Knight to Ms. Minkarious in which the threat of legal proceedings is made if any slanderous comments were to be made. The Deputy Judge characterized this as a "serious threat". Importantly, in my view, the Deputy Judge linked this message to having been sent a day or two after Ms. Minkarious went on medical leave.

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[33] The Deputy Judge specifically found that Ms. Knight mistreated Ms. Minkarious by her conduct on September 21, 22 and 23rd. He also found that there were continual demands to attend meetings when the plaintiff was on medical leave, which he held amounted to a failure of the duty to accommodate, as well as a further violation of her privacy. Cumulatively, he found this was sufficient to constitute a toxic work environment.

[34] It is my view that the Deputy Judge was entitled to conclude that the employer's conduct created a poisoned work place and that Ms. Minkarious was constructively dismissed on that basis. It was not simply an isolated event. He found a pattern of conduct over several weeks.

[35] The Appellant repeats the argument that it made in Small Claims Court—that an employee must make an election, by communicating to the employer, that they have been constructively dismissed within a reasonable period of time. The Appellant argues that a failure to do so condones the employer's conduct.

[36] In *Persaud, supra*, the Court of Appeal noted that where an employee is faced with a unilateral change by an employer in the essential working conditions, the employee is to be given some time to notice the change and then consider how best to respond. The Court approved of the trial judge's recitation of the following principle of law:

> [43] An employee is entitled to a reasonable period of time to assess his or her circumstances and make an election. However, a considerably extended period of time will preclude an action for constructive dismissal. In most circumstances, courts will view an employee's willingness to remain in the altered position for a significant period of time as acceptance of the new terms, absent other mitigating factors.

[37] I note that Glustein J. in *Persaud* described the duty to make a timely election and the doctrine of condonation when dealing specifically with the situation in which the employer unilaterally changes the employment conditions (see paras. 39-43 in the trial decision). Quoting from *Quitting for Good Reason: The Law of Constructive Dismissal in Canada* (Canada Law Book, Aurora, 2001), at pp. 48-49, Glustein J. noted:

> An employment contract is not terminated simply by an employer's wrongful breach of the contract. Rather, the employee is required to 'accept' the employer's repudiation in order to bring the employment relationship to an end and recover wrongful dismissal damages. …Thus, the employee faced

> with a unilateral variation of a fundamental nature has a positive obligation to signal his or her rejection of the new terms in a timely fashion, or else risk being viewed as condoning the changes. …In this sense, the employee is faced with a choice to 'elect' whether to accept or repudiate the new terms imposed by the employer.

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[38] It is clear that Glustein J. was making those comments in respect of the first branch of the *Potter* tests for constructive dismissal. He specifically deals with the poisoned work environment subsequently and does not address condonation (at paras. 47-50).

[39] In *McGuinty v. 1845035 Ontario Inc.,* 2020 ONCA 816, the Court of Appeal described condonation as applying to both branches of the *Potter* test, at para. 24. The employee has an election to make—whether to continue to work, and so accept the single breach/course of conduct, or to treat that breach/conduct as bringing the contract to an end and sue for constructive dismissal. A claim that the employee has condoned a breach or course of conduct is a defence to a claim of constructive dismissal. The burden is on the employer to establish condonation.

[40] In *McGuinty*, the Court described that the employee must make his or her election within a "reasonable period of time" but also noted that "reasonableness" is only a "notoriously vague" standard. Whether an employee acts within a reasonable period of time is a fact-specific determination that must be made by the trial judge based on consideration of a number of factors and the trial judge's finding is entitled to deference (at para. 25)(emphasis mine).

[41] Importantly, in *McGuinty* the employee did not formally communicate his acceptance of the employer's repudiation of the contract before issuing the statement of claim almost two years later. Noting that this was a lengthy period of time by "any standard", the Court nonetheless noted that it is more difficult to conclude that condonation had been established where the employee had been unable to work because they were on medical leave due to the very conduct that established the constructive dismissal.

[42] The Court of Appeal noted that the trial judge was entitled to find that the employee could not be said to have willingly remained in his position despite the employer's conduct because "he did not and could not return to work during that period of time due to depression and anxiety".

[43] The Court, at para. 35, described that the real question is whether in all of the circumstances, including the passage of time, it should be inferred that the employee had accepted the new situation, condoning the employer's course of conduct and so lost his right to sue for constructive dismissal. The Court upheld the trial judge's determination that he had not.

[44] In the case before me, the Deputy Judge addressed the reasonable time argument, although he did so under the heading dealing with mitigation. He acknowledged the defendant's position that for there to be a constructive dismissal, the employee is required to accept the employer's repudiation of the contract.

[45] It is clear that the Deputy Judge concluded that Ms. Minkarious was justified in not communicating her position that she had no intention of returning to work because she felt emotionally overwhelmed. He stated, "one can certainly understand in the circumstances her complete sense of being overwhelmed by the defendant's egregious actions at the home visit and over the following four months". He then blamed Ms. Knight for creating a situation in which Ms. Minkarious would not feel comfortable communicating her position. Again, this finding was open to the trial judge.

[46] Similar to the case in *McGuinty*, it would be difficult to conclude that Ms. Minkarious condoned the employer's conduct because she never actively returned to work before issuing the statement of claim (see also: *Pham v. Qualified Metal Fabricators Ltd*., 2023 ONCA 255 at para. 56). It is true that the trial judge found that "at no time" did Ms. Minkarious clearly communicate her repudiation to the employer. However, the statement of claim itself was a clear repudiation and it cannot be said that it was issued such an unreasonable time after the plaintiff went off work that Ms. Minkarious condoned her employer's conduct. McGuinty makes clear that issuing a statement of claim within a reasonable period of time constitutes clear communication of repudiation.

[47] Respectfully, the Appellant's position entirely ignores the critical finding in the *McGuint*y case. Ms. Minkarious never signalled that she condoned the conduct of which she now complains because she never did return to work.

[48] In the Appellant's closing arguments at trial, counsel urged the Deputy Judge to find that six months, between September 2020 and March 2021 when the Statement of Claim was served, was an unreasonable amount of time. It is clear from his Oral Reasons that the Deputy Judge rejected this argument. According to *McGuinty*, it was up to him to determine what amount of time was reasonable and his decision is entitled to deference.

[49] I also note that the Appellant's reliance on the finding in *Persaud* that five months was an unreasonable amount of time is misplaced. In *Persaud*, the employee continued to actually work for five months with longer hours without complaint. There was no finding that there was a toxic work place that caused her to leave her position. The present case is distinguishable from *Persaud* and in line with *McGuinty*.

[50] I find that the Deputy Judge made no reversible error with respect to constructive dismissal.

[51] I also find that his assessment of damages for constructive dismissal is entitled to deference. He considered and applied the well known *Bardal* factors.

Abandonment:

[52] The Appellant also argued at trial that Ms. Minkarious abandoned her job because she had applied for and accepted admission into college and therefore did not intend to return to work. They cited the text between her and her sister as evidence of her intention to leave her job. On appeal, it is argued that the trial judge did not directly confront that argument.

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[53] The test for abandonment is met where the statements or actions of an employee, viewed objectively by a reasonable person, clearly and unequivocally indicate an intention to no longer be bound by the employment contract (see: *Nagpal v. IBM Canada Ltd*., 2021 ONCA 274 at para. 32). As noted at para. 43, the onus is on the employer to prove abandonment or resignation by the employee.

[54] It is clear from the Deputy Judge's Reasons that he considered the evidence that Ms. Minkarious had applied for and been accepted to college. He also specifically indicated that she should have advised Ms. Knight of that fact. The Appellant is correct that the Deputy Judge did not directly address the Appellant's position that Ms. Minkarious had abandoned her employment.

[55] In light of the Deputy Judge's conclusion that Ms. Minkarious had been constructively dismissed, he could not also have found that she abandoned her employment. A person who abandons their employment cannot also be constructively dismissed. It is one or the other (see: *Gebreselassie v. VCR Active Media Ltd.*, 2007 CarswellOnt 6969 at para. 58). Hence, the trial judge clearly rejected the abandonment argument when he accepted the constructive dismissal.

[56] The difficulty with the Appellant's argument that Ms. Minkarious abandoned her position by applying to college and accepting a position ignores her evidence that she did so unsure of whether or not she would actually attend. There was no clear and unequivocal conduct on Ms. Minkarious that would signal abandonment or resignation on the evidence. Ms. Minkarious did not simply stop coming to work. Rather she furnished doctor's notes that placed her on medical leave.

[57] While the Appellant argues that Ms. Minkarious was deceitful in the manner in which she handled this, that was a point argued before the Deputy Judge. He recognized some aspects of Minkarious' conduct that were problematic but nevertheless found that it was the employer's conduct that led to the end of the employment. He was entitled to do so.

[58] The Appellant asserts that Ms. Minkarious had a positive duty to inform her employer that she was returning to school. No legal authority is cited for that proposition. In my opinion, there is nothing inherently wrong with an employee applying and accepting a position in college to commence months later and weighing all of her options before advising her employer of her plans.

The *Human Rights Code* Claim:

[59] The *Human Rights Code* codifies that every person has a right to equal treatment with respect to employment without discrimination because of, *inter alia*, disability in s. 5(1).

[60] In *Wilson v. Solis Mexican Foods Inc*., 2013 ONSC 5799, Grace J. awarded damages for breach of the *Code*. This case was relied upon by Ms. Minkarious at trial. In *Wilson,* the plaintiff had a back ailment and went off work at the behest of her physician. She was then deemed to be capable of returning to work on a graduated basis. The employer would not agree to the gradual return to work, instead insisting upon a return to full-time hours and duties before making the

transition back to the workplace. Subsequently, when the company reorganized, the plaintiff was terminated.

[61] Grace J. reviewed the case law and noted at para. 56 that "a decision to terminate an employee in whole or in part—on the fact that employee has a disability is discriminatory and contrary to the *Code.* If an employer regards disability as a factor justifying termination (or other negative treatment), the employee in question is not receiving "equal treatment…without discrimination" as s. 5(1) of the *Code* requires". Thus, it is sufficient if a disability is **a** factor and not the only or primary factor in the decision to terminate.

[62] Grace J. relied upon s. 46.1 of the *Code* which authorizes a court, in a civil proceeding, to pay monetary compensation where a party has infringed a "right" of another party. He examined legal precedent that indicated that these awards encompass humiliation, hurt feelings, the loss of self-respect, dignity and confidence by the complainant, the experience of victimization, the vulnerability of the complainant and the seriousness of the offensive treatment.

[63] Grace J. made an award of $20,000.

[64] I note that the Ontario Court of Appeal reviewed damages assessments for *Code* violations in *Strudwick v. Applied Consumer & Clinical Evaluations Inc*., 2016 ONCA 520. The award of $20,000 is within the range of cases noted, although the cases are all fact specific.

[65] In his Reasons, the Deputy Judge cited heavily from *Wilson*. He made a specific finding that the constructive dismissal occurred as a result of the plaintiff's disability. Thus, he found that the disability was a reason why Ms. Minkarious was constructively dismissed.

[66] The Deputy Judge specifically found that when the Appellant was dealing with the VON issue, Ms. Knight took a "self-centred view" and was "less concerned" about the employee, who had just gone on medical leave, supported by a doctor's note. He also found that when the unannounced visit at Ms. Minkarious' apartment concluded, Ms. Minkarious was emotionally upset and spent. She was crying, shaking and "very rattled".

[67] The Appellant relies upon *Dilbert v. Environmental Contracting Services Inc*., 2020 HRTO 341, for the proposition that the duty to accommodate is a "two way street" and Ms. Minkarious had a duty to cooperate in formulating a return to work with Ms. Knight. The Tribunal referred to *Central Okanagan School District No. 23 v. Renaud* 1992 CanLII 81 (SCC), [1992] 2 SCR 970, in which the Supreme Court of Canada described that the employee seeking accommodation is responsible for requesting accommodation and must facilitate the search for accommodation. In short, all parties to the accommodation process have obligations.

[68] But the dispute between Ms. Minkarious and the Appellant was not about a failure to accommodate as Ms. Minkarious' doctor had not, on the evidence, yet cleared Ms. Minkarious to do any work. I do not interpret *Wilson* as requiring a failure to accommodate in order to ground an award of damages under s. 46.1 of the *Code*. In *Strudwick, supra*, the Court of Appeal identified two main aspects of abuse, the employer's general treatment of the employee being separate from its conduct in relation to accommodating her disability.

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[69] The issue was properly identified by the Deputy Judge as whether the disability was one of the causes that led to the conduct that constituted the constructive dismissal.

[70] There was ample evidence to support the Deputy Judge's conclusion. Ms. Knight made it clear that Ms. Minkarious' disability was causing the Appellant a lot of difficulties and she was frustrated by her medical leave. She "pestered" Ms. Minkarious for private medical information. Even at trial and this appeal, it was the Appellant's position that Ms. Minkarious fabricated her medical leave to avoid dealing with the VON issue.

[71] I find that the Deputy Justice made the requisite finding to award damages under the *Code*. His assessment of damages is entitled to deference and is within the awards made for similar claims. I would not interfere.

The 9th Ground of Appeal:

[72] I believe that my above Reasons address the grounds of appeal set out in the Notice of Appeal, numbers 1, 2, 3, 4, 5, 6, 7 and 8.

[73] The 9th ground of appeal is that "the Deputy Judge permitted the Respondent's lawyer to give material evidence during closing argument and relied on that evidence in finding that the Respondent was constructively dismissed".

[74] During closing arguments, the Deputy Judge asked counsel for Ms. Minkarious "when do you say the notice period starts to run?" Counsel responded that in his view it began to run on November 19th, 2020. He relied on notes written by Ms. Minkarious that were in evidence and suggested that she was so upset by Ms. Knight's conduct that she decided that she could no longer continue. This was not evidence being given by counsel, but counsel referring to evidence that was tendered at trial.

[75] I reject that ground of appeal.

Disposition:

[76] For the above Reasons, the appeal is dismissed.

[77] The Respondent is entitled to her costs of this appeal. If the parties cannot agree on costs, the Respondent shall serve and file written submissions on costs not to exceed three pages double spaced by January 16, 2026, and the Appellant shall serve and file written submissions within the same parameters by January 23, 2026. The submissions are to be emailed to my assistant, Nadine.Long@ontario.ca.

"Justice Spencer Nicholson"

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Justice Spencer Nicholson

Date: December 29, 2025

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SUPERIOR COURT OF JUSTICE

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BETWEEN:

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– and –

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Appellant

REASONS FOR JUDGMENT

Nicholson J.

Released: December 29, 2025