

In the Court of Appeal of Alberta

Citation: Gugulyn v Alberta, 2026 ABCA 68

Date: 20260310
Docket: 2503-0041AC
Registry: Edmonton

Between:

Derrick Gugulyn

Respondent/ Cross-Appellant

- and -

His Majesty the King in right of Alberta

Appellant/ Cross-Respondent

The Court:

**The Honourable Acting Chief Justice Dawn Pentelchuk
The Honourable Justice Frans Slatter
The Honourable Justice Jolaine Antonio**

**Memorandum of Judgment
Delivered from the Bench**

Appeal from the Judgment by
The Honourable Justice D.J. Kiss
Dated the 11th day of February, 2025
Filed on the 23rd day of April, 2025
(Docket: 2103 04986)

**Memorandum of Judgment
Delivered from the Bench**

The Court:

[1] This is an appeal and a cross-appeal from the trial judge's finding that the respondent, Derrick Gugulyn, failed to fully mitigate his damages following his constructive dismissal by the Government of Alberta.

[2] Derrick Gugulyn worked for Alberta for over 23 years, most recently as the Director of Financial Planning. In early 2021, after a spate of departures, his supervisor advised him that he would be transferred to become the Director of Compliance. Derrick Gugulyn made it clear that he was unwilling to accept the Director of Compliance position because it required education and experience he did not have.

[3] Nevertheless, on March 2, 2021, Derrick Gugulyn's supervisor emailed department employees to announce that Derrick Gugulyn had accepted the new position. Derrick Gugulyn was upset and reiterated his unwillingness to accept the transfer. He retained legal counsel, who informed Alberta on March 16, 2021, that its conduct constituted constructive dismissal and Derrick Gugulyn did not intend to continue his employment. Alberta asked him to reconsider. On March 24, 2021, it followed up with a formal offer of the Director of Compliance position. Derrick Gugulyn did not accept the offer and did not return to work.

[4] The trial judge concluded that Alberta constructively dismissed Derrick Gugulyn. This finding is not under appeal. The trial judge determined Derrick Gugulyn was entitled to 23 months' notice and in lieu, the salary and benefits he would have earned during that 23-month period. However, the trial judge found Derrick Gugulyn did not mitigate his loss by failing to take reasonable steps to find suitable new employment. Had he done so, he would have found a comparable position with a different branch of the Government of Alberta within 17 months of his constructive dismissal.

[5] Alberta has appealed, and Derrick Gugulyn has cross-appealed the trial judge's findings on mitigation.

[6] Alberta argues that Derrick Gugulyn completely failed to mitigate his loss because a reasonable person in his situation would have accepted Alberta's offer of re-employment as Compliance Director made on March 24, 2021. The leading authority on when it is reasonable for an employee who has been dismissed to return to work for the same employer is *Evans v Teamsters Local Union No 31*, 2008 SCC 20. According to *Evans*, the assessment is objective and multi-factored. Among the relevant factors are whether the salary is the same, the working conditions are not substantially different, the employee has commenced litigation, and the offer

was made before or after the employee left. A critical factor is whether the employee would be returning to work in an atmosphere that is hostile, embarrassing or humiliating: *Evans* at para 30. It is not reasonable to expect an employee to return to such an environment.

[7] The trial judge concluded that a reasonable person would not have accepted the March 24 offer because the work environment would be “intolerable”. That conclusion was based on three core findings. First, Derrick Gugulyn had already informed Alberta that he intended to seek damages for constructive dismissal. Second, the supervisor in the Director of Compliance position would have been the same person and their relationship was strained to the point of being “acrimonious”. Third, the way Alberta implemented the transfer undermined the trust between Alberta and its employee.

[8] In our view, the trial judge’s analysis accurately applied the law set out in *Evans*. Alberta argues that the finding that the work environment was intolerable reflects an erroneously “subjective” approach to the issue. We disagree. The finding simply reflects the trial judge’s credibility findings, not an error of law. There is no error in referring to the witness’s evidence to inform the decision as to the objective standard.

[9] In summary, the finding that a reasonable person in Derrick Gugulyn’s situation would not have accepted Alberta’s offer of re-employment does not disclose a reviewable error.

[10] The trial judge’s reasons correctly stated that Alberta, as the employer, had the burden of proof to establish a failure to mitigate. In the appeal and the cross-appeal, Alberta and Derrick Gugulyn both challenge the finding that Derrick Gugulyn would have secured a suitable alternative position with the Government of Alberta within 17 months if he had taken reasonable steps to do so. This is also a question of mixed fact and law reviewable for palpable and overriding error.

[11] In the alternative, Alberta argues that Derrick Gugulyn would have secured alternative employment within nine months; Derrick Gugulyn argues that he did take reasonable steps to find new employment and, even if he did not, the evidence does not support a finding that he would have obtained a suitable alternative within the 23-month notice period. Accordingly, the trial judge should not have reduced his damages award at all.

[12] While the trial judge’s reasons on this point are very brief, neither Alberta nor Derrick Gugulyn has shown that her findings were clearly wrong. We do not accept that, in these circumstances, Alberta needed to call recruitment experts to prove that Derrick Gugulyn would have obtained an advertised position during the 23-month notice period. It was open to the trial judge to draw the factual inference that he would have been successful within 17 months given his qualifications and skills and the job descriptions in the postings that were put in evidence.

[13] In summary, both the appeal and the cross-appeal are dismissed.

Appeal heard on March 3, 2026

Memorandum filed at Edmonton, Alberta
this 10th day of March, 2026

Pentelechuk A/C.J.A.

Slatter J.A.

Antonio J.A.

Appearances:

C. Greschner

E. Phillipos

for the Respondent/ Cross-Appellant

N. Sutherland

P. Buijs

for the Appellant/ Cross-Respondent