

CITATION: Poesl v. Sharon Veterinary Clinic Professional Corporation, 2025 ONSC 622
COURT FILE NO.: CV-20-00003603-0000
DATE: 20250129

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
MAYA POESL)	<i>Dennis Ovsyannikov, for the Plaintiff</i>
)	
)	Plaintiff
)	
– and –)	
)	
SHARON VETERINARY CLINIC)	<i>John Yach, for the Defendant</i>
PROFESSIONAL CORPORATION)	
)	
)	Defendant
)	
)	
)	HEARD in Newmarket: September 16, 17, and 18, 2024

2025 ONSC 622 (CanLII)

REASONS FOR DECISION

REGIONAL SENIOR JUSTICE EDWARDS

Overview

[1] The Plaintiff is a veterinarian who was employed by the Defendant over a period of approximately 20 years. The Plaintiff in this action asserts a claim for wrongful dismissal or in the alternative constructive dismissal.

The Facts

[2] The Defendant is a small veterinary clinic located in Sharon, Ontario. The clinic is a relatively small business operation that employs approximately seven people. The sole shareholder and the directing mind at the clinic is Diane Clark, who is also a licensed veterinarian with the College of Veterinarians of Ontario (the “CVO”).

[3] The Plaintiff received an hourly rated salary and was also entitled to a form of bonus based on a percentage of the billings of clients she actually had brought into the clinic. In the year prior to her leaving the clinic her T4 earnings shows that she earned \$86,732, an amount which is inclusive of her bonus. On a monthly basis, based on her 2019 earnings, the Plaintiff was earning \$7,227.67 per month.

[4] It is acknowledged that in her capacity as a vet the Plaintiff had some supervisory responsibilities over other staff members.

[5] The claim as initially asserted involved a claim arising out of the layoff of the Plaintiff as a result of the COVID-19 pandemic. In his closing argument, Plaintiff's counsel advised the court that there is no stand-alone claim being made for any losses that might have been suffered by the Plaintiff during the course of the COVID-19 layoff. Plaintiff's counsel also agreed as part of his closing argument that the COVID-19 layoff did not constitute grounds for a constructive dismissal claim. The sole basis of the Plaintiff's claim arises out of what transpired during the course of a telephone call between the Plaintiff and Ms. Clark on August 28, 2020, the details of which are set forth below.

[6] The lead up to the telephone call of August 28 begins with the events that occurred during the first weekend in August 2020 when Ms. Clark was asked to look after a cat belonging to a client of the clinic Diana Smith ("Smith"). It is not disputed that the cat escaped from the clinic and that Ms. Clark acknowledged responsibility for the cat's escape.

[7] On Wednesday, August 5, 2020, Jaimie West ("West"), Smith's partner, contacted clinic staff after being notified that the cat had been lost by the clinic. West made threats of harm that were sufficiently concerning that Ms. Clark then directed clinic staff to contact the police who conducted an investigation and spoke directly with West warning him to never again attend the clinic premises and not to contact any clinic staff, failing which criminal charges would be laid.

[8] In addition to contacting the police, Ms. Clark contacted her security alarm company to advise of the incident and also to request that if an alarm was triggered that the police were to be called immediately.

[9] On August 5, 2020, Ms. Clark spoke with West by telephone and advised him that she was personally responsible for the loss of the cat. She further confirmed that the police had been contacted and reiterated to West that he was not to have any further contact with the clinic or its staff. Ms. Clark suggested to West that he heed the police warnings. Ms. Clark's evidence at trial suggested that West, in this telephone call, appeared calmer and was willing to abide by the police warnings.

[10] On August 10, 2020, Ms. Clark instructed clinic staff that no services were to be provided to either Smith or West. To give effect to these instructions a notation was placed on the patient chart that read: "Absolutely no service".

[11] In furtherance of these instructions to provide no service to Smith or West, Ms. Clark advised clinic staff that if either of Smith or West were to contact the clinic requesting additional services that they were told that Smith and/or West were to be advised that they should take their cat to an emergency clinic (assuming the cat was ever found) and that Ms. Clark would pay for any fees associated with such services.

[12] On August 10, 2020, Smith contacted the clinic and requested the entirety of the medical file for her cat be released to her. The chart was released with a covering letter to Smith which included the following admonition:

Some of our staff were very upset with Jaimie's behaviour that Saturday morning... as staff are now extremely uncomfortable with Jaimie, we asked that he please honour the verbal warnings set out by the police officer he spoke with.

[13] From the time of the initial threat made by West to the clinic staff, on August 5, 2020, through August 17, 2020, the Plaintiff worked her regular full-time hours at the clinic.

[14] On August 18, 2020, the Plaintiff communicated by text to Ms. Clark to advise that her father-in-law had passed away and indicated:

I am sorry for the short notice, but I will not be in this week.

[15] On August 21, 2020, the Plaintiff attended at the clinic and provided a doctor's note to Ms. Clark that stated:

This woman was seen in my office today because of an incident which happened at her workplace. Her presentation to me indicates she will not be able for medical reasons to return to her normal workplace until this issue is resolved. Doing so, I believe, will significantly ameliorate her symptomology, which presently will prevent her from returning to work.

[16] When the Plaintiff attended at the clinic on August 21, 2020, the Plaintiff advised Ms. Clark that she required the clinic to send a letter directly to West "terminating him as a client". I will refer to this demand as the termination letter.

[17] On August 28, 2020, a telephone call took place between the Plaintiff and Ms. Clark. The genesis for this telephone call is in dispute. The Plaintiff in her evidence suggests that the sole reason for the telephone call was a request by Ms. Clark in relation to when the Plaintiff might be coming back to work. Ms. Clark in her evidence suggests that the genesis for the phone call arose as a result of a suggestion from Sandra Keen who is best described as the clinic's bookkeeper. Ms. Clark testified that Ms. Keen suggested that it would be a good idea to contact the Plaintiff to see how she was doing.

[18] Regardless of the purpose of the phone call, there is no dispute between the parties that at least part of their discussion revolved around whether or not Ms. Clark was going to send the termination letter to West. Ms. Clark advised the Plaintiff that she had not sent the termination letter, nor did she intend to do so as she was of the view that sending such a letter might only inflame the situation.

[19] When advised by Ms. Clark during the course of this telephone call that a termination letter would not be sent, the Plaintiff responded by indicating that if a letter was not sent, she would not be “coming back”. Upon being advised that the Plaintiff would not be coming back, Ms. Clark then requested the Plaintiff return her keys to the clinic’s premises.

[20] Subsequent to the August 28, 2020 telephone call, the Plaintiff informed Ms. Keen in a private communication that she had been “fired”. Ms. Keen advised Ms. Clark of this fact to which Ms. Clark informed Ms. Keen that the Plaintiff had not been fired and that she had advised the Plaintiff to take some additional time off work to recover her health.

[21] On September 3, 2020, Ms. Clark sent a letter to the Plaintiff which stated:

I have spoken to him (West) as did the police and I am confident he will not be attending the clinic. He has no reason to attend the clinic, if he does the police will respond. I believe that correspondence from the clinic to this individual is unnecessary and in fact may be counterproductive in terms of ensuring no future contact with the clinic. I believe there is very little if any risk to you as you are not the focus of this individual’s complaints.

I hope that you will return to work soon. If you require further time off, please let me know how much time you require. Could you please confirm when you will be returning to work so that I may schedule appropriately.

[22] The Plaintiff did not communicate a response to Ms. Clark’s letter of September 3, 2020, either by text or any other form of written communication until a letter was sent on September 29, 2020, from a lawyer writing on behalf of the Plaintiff who took the position that the Plaintiff had been wrongfully or constructively dismissed.

Position of the Plaintiff

[23] Plaintiff’s counsel takes the position that the evidence establishes that the Plaintiff was either wrongfully or constructively dismissed and that as a result the Plaintiff is entitled to 24 months’ notice. It is conceded that the basis upon which the court should calculate the Plaintiff’s monthly salary would be from the Plaintiff’s 2019 T4 earnings.

[24] In addition to the Plaintiff’s claim for common law notice Plaintiff’s counsel asserts a claim for moral damages that in argument he initially quantified at \$150,000. When pressed by the court, counsel conceded he had no caselaw to support such a figure and suggested that an appropriate range was in the \$10,000-30,000 range. In argument, Plaintiff’s counsel abandoned his claim for punitive damages and damages for mental distress largely because no medical evidence was produced to support any such claim. Plaintiff’s counsel did however assert a claim for general damages for breach of the *Human Rights Code*, R.S.O. 1990, c. H.19, the basis for which claim arises out of the fact that the Plaintiff was not recalled for work when she was on medical leave.

In that regard, Plaintiff's counsel asserted a claim for \$150,000 but again when pressed acknowledged that a more realistic assessment would be in the \$20,000-30,000 range.

[25] The Plaintiff mitigated her damages in 2021. No evidence was provided to the court with respect to the Plaintiff's efforts to mitigate or inability to mitigate for any medical reason. The Plaintiff's earnings in 2021 were \$11,648 which would be deducted from any common law notice.

[26] At the root of the Plaintiff's argument is the suggestion that Ms. Clark was motivated to terminate the Plaintiff because the Plaintiff only wanted to do tele-medicine from home and that she did not want to put in more hours than she had worked prior to the COVID-19 pandemic.

[27] In addition, it is argued on behalf of the Plaintiff that her demand for a termination letter in connection with the threats made by West was entirely appropriate and is backed up by the letter from her doctor indicating that she would be off work indefinitely until the issue at work was addressed, i.e., the sending of the termination letter.

[28] In argument, I suggested to Plaintiff's counsel that another way of approaching this case is for the court to determine whether or not the request for a termination letter and Ms. Clark's refusal to do so was reasonable and correct. Put differently, if the court determines that Ms. Clark was correct in her refusal to send the termination letter, then the court could view the Plaintiff's position in refusing to return to work as a resignation. Conversely, if the court determines that the sending of the termination letter was an appropriate demand made by the Plaintiff, then the court may view Ms. Clark's refusal to send the termination letter as grounds for a constructive dismissal claim. Plaintiff's counsel agreed with this approach.

[29] Plaintiff's counsel also focused on Ms. Clark's request for the return of the keys to the clinic. Relying on Ms. Keen's evidence that keys were only returned if someone was fired, terminated, or resigned, it is argued that the request by Ms. Clark for the return of the keys demonstrates that the request was only made because the Plaintiff was being fired.

[30] In terms of mitigation, Plaintiff's counsel argues that the suggestion that the Plaintiff should have mitigated by returning to work after she received Ms. Clark's letter of August 31, 2020, would not have been reasonable as the relationship between the parties had broken down. Counsel argues that Ms. Clark's letter of August 31, 2020 was not sent in good faith.

Position of the Defence

[31] It is argued on behalf of the Defence that the Plaintiff's demand for the termination letter was unreasonable. It is argued that the approach of Ms. Clark to the threats made by West was entirely appropriate. Specifically, it is argued that by immediately contacting the police and engaging the police directly with West, this was the most appropriate manner to ensure that the clinic's staff including the Plaintiff were properly protected. Furthermore, it is argued Ms. Clark had a conversation with West that further communicated the importance of abiding to the police warning. As well, it is argued that, by advising clinic staff and placing on the client patient record

that no further services were to be provided, it was clear that neither Smith nor West would ever have any pet of theirs treated by the clinic.

[32] It is also noted that for approximately two weeks after the incident with West, the Plaintiff worked at the clinic and on the evidence, it appears she felt safe enough to work and travel back and forth from the clinic to her home - a home that was within two streets of where West lived. It is not until after the Plaintiff's father-in-law had passed away that the Plaintiff produced the doctor's note indicating that until the issue at work had been resolved, she would not be returning to work.

[33] As for the telephone call of August 28, 2020, it is argued that this telephone call was initiated by Ms. Clark at the suggestion of Ms. Keen for the sole purpose of finding out how the Plaintiff was doing and when she might be returning to work. Is it argued that there is no basis for the suggestion that the sole purpose of this telephone call was preordained that Ms. Clark was going to terminate the Plaintiff. As further evidence, in this regard, Defence counsel points to the letter from Ms. Clark to the Plaintiff dated August 31, 2020 which it is suggested is a reflection of what was in fact discussed during the telephone call of August 28, 2020.

[34] As for the suggestion that the refusal to send the termination letter gives ground for constructive dismissal, Defence counsel argues that the Plaintiff failed to mitigate her damages by refusing to return to work. In that regard, the Plaintiff has the onus to prove what is often described as a "poisoned workplace". The Plaintiff must satisfy the court that objectively the refusal to send the termination letter was inappropriate.

[35] In the event the court decided the Plaintiff was entitled to common law notice, Defence counsel suggests the appropriate notice is 12 months.

[36] As it relates to the discrimination claim, it is argued that no evidence was led by the Plaintiff that would evidence Ms. Clark tried to force the Plaintiff to return to work in the face of a medical disability. To the contrary, it is argued that Ms. Clark's letter of August 31, 2020 makes clear that if the Plaintiff needed more time off work she was to do so. It is also argued that there is absolutely no medical evidence adduced by the Plaintiff from a doctor, a family member, or anyone else regarding her symptomology had any effect on her life.

[37] In terms of the Plaintiff's obligation to mitigate her damages, Defence counsel notes that the Plaintiff has produced no medical evidence establishing that in the 13 months she was not working prior to obtaining a new position of employment that throughout that period she was unable to work for medical reasons. The court heard no evidence about the Plaintiff's symptoms and inability to work throughout the 13-month period, nor is there any evidence of any job search by the Plaintiff. Fundamentally, it is argued, that the Plaintiff did not mitigate her damages because there is no evidence of her efforts to do so.

[38] As for the claim for moral damages, it is argued the Plaintiff adduced no evidence that Ms. Clark did anything inappropriate or unreasonable or highhanded and insensitive to the Plaintiff.

Analysis

[39] This is an unfortunate case that with some common sense should have never got to the point of litigation. A feral cat was lost by the clinic. The owner of the cat was understandably upset with the loss of a pet. The owner's husband reacted in a manner that might cause anyone to feel concerned for their safety. Steps were taken by the owner of the clinic, Ms. Clark, to protect the staff from West. Those steps included contacting the police who then contacted West and warned him to stay away from the clinic. Ms. Clark also directed staff to under no circumstances provide any further veterinary assistance to either the owner of the cat or West. This was reflected on the client's chart - "absolutely no service". The alarm company servicing the clinic was also alerted. The evidence establishes that West on all accounts heeded the advice of the police.

[40] After the incident involving the loss of the cat and the unfortunate interaction with West the evidence is clear that the Plaintiff continued to attend the clinic for approximately two weeks where she continued with her professional veterinary responsibilities as an employee. It is also noteworthy that the Plaintiff lived within two blocks of where West lived. There is no evidence that living in this proximity caused the Plaintiff any misgivings.

[41] There then ensues the telephone discussion between the Plaintiff and Ms. Clark on August 28, 2020. I accept the evidence of Ms. Clark that she initiated this telephone call at the instigation of Ms. Keen who had suggested it would be a good idea for Ms. Clark to find out how the Plaintiff was doing. I do not accept the suggestion that there was anything nefarious about Ms. Clark's intentions.

[42] Having asked how the Plaintiff was doing Ms. Clark received a response that underlies this entire litigation. The Plaintiff made it clear to Ms. Clark she would not be returning to work unless "the termination letter" was sent to the client. As I suggested to counsel for the Plaintiff during argument, if the Plaintiff was legally correct in demanding the sending of the termination letter, and Ms. Clark wrongfully refused to send the termination letter then the legal consequences of such refusal would constitute grounds for constructive dismissal. The corollary to this suggestion is that if this court agrees that Ms. Clark was under no obligation to send the termination letter, the Plaintiff is deemed to have resigned her position with the Defendant.

[43] The Plaintiff in her evidence suggested that putting "absolutely no service" on the client's file did not conform with the requirements of the College of Veterinarians of Ontario (The College). The Plaintiff chose not to call any evidence from the College that would establish that the actions of Ms. Clark did not conform with the College's rules and regulations. In the absence of such evidence, there is no evidence that Ms. Clark had a professional duty imposed on her by the College to send a termination letter. As such I assess the refusal of Ms. Clark to send the termination letter as a matter of common sense.

[44] Ms. Clark testified she did not send the termination letter for reasons communicated to the Plaintiff which, amongst other things, was a matter of common sense - to send the letter could inflame matters. The actions taken by Ms. Clark were the actions of a responsible employer. She

called the police. The police warned West. Staff were told not to provide any more services to the client. A warning to this effect was placed on the client's file. The client was verbally told they would not be welcomed back at the clinic. The client accepted that result and picked up her file. Everything that needed to be done to address the unfortunate loss of the cat and what happened thereafter was done by Ms. Clark. The Plaintiff's request to have the termination letter sent to the client was unreasonable and unnecessary. The Plaintiff insisted on the termination letter being sent. Her refusal to return to work until the termination letter was in law a *de facto* resignation. It was not constructive dismissal.

[45] Much was made in argument about Ms. Clark's request to the Plaintiff for the return of the keys to the clinic. While in some circumstances such a request may be seen as constructive dismissal, I do not reach that conclusion on the facts of this case. Ms. Clark was told by the Plaintiff she may not be returning in the absence of the termination letter being sent. It was not unreasonable for her to request the keys.

[46] If I had found that Ms. Clark had been constructively dismissed she would have been entitled to notice. As a professional veterinarian with twenty years' service with the Defendant, I would have awarded her one month for every year of service or a total of twenty months notice. Deducted from this award would have been the earnings made by the Plaintiff during that notice period. The Plaintiff mitigated her damages in 2021. Her earnings in 2021 as per her T4 totalled \$11,648. There are no details of her T4 earnings for the remaining months of the 20-month notice period into 2022.

[47] The Plaintiff also claimed moral damages of \$150,000 reduced in argument to something in the range of \$10,000 to \$30,000. The Plaintiff claimed damages under the *Human Rights Code*. These claims are dismissed. There is no evidence that the Plaintiff had a medical disability. The only medical evidence was a note from a doctor who suggested that the "workplace issues needed to be resolved". The Plaintiff asserted the resolution of those issues could only be resolved by the sending of the termination letter. The Plaintiff, as I have found, was wrong in that assertion. There simply is no basis for a claim for any moral damages or damages under the *Human Rights Code*.

[48] For these reasons, the Plaintiff's action is dismissed. The parties are encouraged to resolve the issue of costs. If the costs issue can not be resolved the court will receive costs submissions limited to three pages in length to be received no later than March 1, 2025. If costs submissions are not received by March 1, 2025 the court will assume the issue of costs has been resolved.

REGIONAL SENIOR JUSTICE EDWARDS

Released: January 29, 2025

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SUPERIOR COURT OF JUSTICE

MAYA POESL

Plaintiff

– and –

SHARON VETERINARY CLINIC PROFESSIONAL
CORPORATION

Defendant

REASONS FOR DECISION

Regional Senior Justice Edwards

Released: January 29, 2025