

Employee Claims Constructive Dismissal for Subordinate's Harassment



An estimator went to his boss to relay his suspicions that one of his subordinate was doing unrelated work on company time. Of course, the subordinate found out and was upset that the estimator didn't confront him directly. After a prolonged chill, the firm called in a business coach who spoke to both men and recommended that the estimator admit he made a mistake by accusing the subordinate. After a brief respite, the bad blood returned and the situation escalated with the estimator sending an email to the boss documenting 3 specific incidents of insubordination and intimidation by the subordinate, including one involving verbal abuse. An investigation was done finding each side partially responsible. Recommendations: Give the subordinate a written warning and have both sign a copy of the firm's code of conduct. The subordinate signed but the estimator never did. The relationship remained poisonous and, frustrated with the firm's failure to take his side, left and claimed constructive dismissal. But the court clearly had a problem with the estimator's story. Yeah, the subordinate did use profanity once, but a single incident, 'while unprofessional and inappropriate, does not rise to the level of a threat of violence or harassment' warranting a formal disciplinary investigation. Coupled with his failure to sign the policy and unwarranted claims of being forced out, the court rejected his constructive dismissal claim [[Baraty v](#)

[Wellons Canada Corp.](#), 2019 BCSC 33 (CanLII), Jan. 11, 2019].