

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Clark v. Prince George (City)*,
2026 BCCA 202

Date: 20260430
Docket: CA50706

Between:

Rob Wayne Clark

Appellant
(Plaintiff)

And

City of Prince George

Respondent
(Defendant)

Corrected Judgment: The cover page of the judgment was corrected
on May 13, 2026.

Before: The Honourable Mr. Justice Abrioux
The Honourable Justice MacNaughton
The Honourable Justice Francis

On appeal from: An order of the Supreme Court of British Columbia, dated
April 30, 2025 (*Clark v. City of Prince George*, 2025 BCSC 812,
Kelowna Docket S133729).

Oral Reasons for Judgment

Counsel for the Appellant: B.C. Harvey

Counsel for the Respondent: N.C. Toye
D.J. Preston

Place and Date of Hearing: Vancouver, British Columbia
April 30, 2026

Place and Date of Judgment: Vancouver, British Columbia
April 30, 2026

Summary:

The appellant appeals from a decision dismissing his wrongful dismissal claim in which he alleged constructive dismissal when his employer placed him on unpaid leave for failure to comply with its mandatory COVID-19 vaccination policy. He argues that the judge erred in concluding that this did not breach his employment contract because the contract included an implied term allowing his employer to implement health and safety policies. He argues that an implied term permitting the implementation of a mandatory vaccination policy, specifically, was necessary. Held: Appeal dismissed. The judge did not err in finding it unnecessary to consider whether the employment contract included an implied term specifically permitting the implementation of a mandatory vaccination policy. Once the judge found an implied term allowing the employer to implement workplace health and safety policies, the employer's right to implement specific health and safety policies was subject only to the implied qualification that any such policy be reasonable and justified. The appellant has not demonstrated any reviewable error in the judge's conclusion that the vaccination policy was reasonable and justified.

[1] **FRANCIS J.A.:** The appellant, Mr. Clark, was employed by the City of Prince George (the "City"). In 2021, the City implemented a mandatory COVID-19 vaccination policy for its employees (the "MVP"). Mr. Clark chose not to be vaccinated, and, as a result, the City placed him on an unpaid leave of absence for failure to comply with the MVP.

[2] Mr. Clark sued the City for wrongful dismissal, arguing the City constructively dismissed him because the terms of his employment contract did not include a vaccination requirement, and the City was not authorized to place him on an unpaid leave of absence for not being vaccinated. He argued that when the City placed him on unpaid leave on January 17, 2022, it breached an essential term of the employment contract that he was entitled to treat as a repudiation.

[3] Mr. Clark's wrongful dismissal claim was dismissed after a summary trial. On appeal, he asks this Court to find that he was wrongfully dismissed, and to assess damages for his wrongful dismissal.

The chambers judgment

[4] In considering whether Mr. Clark was constructively dismissed, the judge reviewed the test for constructive dismissal as articulated by the Supreme Court of

Canada in *Potter v. New Brunswick Legal Aid Services Commission*, 2015 SCC 10. For a single unilateral act of an employer to constitute constructive dismissal, the act must: 1) breach the employment contract; and 2) be such that a reasonable person in the position of the employee would have felt that the essential terms of the employment contract were being substantially changed: *Potter* at paras. 37–39.

[5] Citing *Potter*, at paras. 41 and 97, the judge noted that where an alleged breach of an employment contract involves an administrative suspension, the burden is on the employer at the first step of the analysis to show that the suspension was reasonable and justified given its nature and circumstances. If the suspension was reasonable and justified, there will be no breach of the employment contract and no constructive dismissal.

[6] In this case, the judge found the unpaid leave of absence was administrative in nature as opposed to disciplinary. It was therefore necessary for her to consider whether the suspension was reasonable and justified given its nature and circumstances.

[7] The judge discussed *Parmar v. Tribe Management Inc.*, 2022 BCSC 1675, a case in which Justice MacNaughton (then of the BC Supreme Court) declined to find constructive dismissal where a non-unionized employee was placed on unpaid administrative leave under a mandatory COVID-19 vaccination policy. The judge acknowledged that the employment contract in *Parmar* expressly required Ms. Parmar to comply with all policies as amended from time to time by the employer, whereas Mr. Clark's employment contract did not contain such a provision. This required her to consider whether such an implied term existed in Mr. Clark's employment contract. In doing so, the judge applied *Village Gate Resorts Ltd. v. Moore* (1997), 47 B.C.L.R. (3d) 153, 1997 CanLII 4052 (C.A.), the leading authority from this Court on the issue of implied contractual terms.

[8] In support of its argument that there was an implied term in the employment contract that permitted the City to implement the MVP, the City pointed out its legal obligation pursuant to the *Workers Compensation Act*, R.S.B.C. 2019, c. 1, s. 21,

and the *Occupational Health and Safety Regulation*, B.C. Reg. 296/97, to provide a safe and healthy workplace for its employees and to take steps to mitigate against workplace health and safety risks.

[9] The judge accepted the City's argument in this regard:

[51] I agree with the City that it would be illogical, not to mention unworkable in light of its obligations, to find the City in breach of individual employment contracts for implementing and enforcing City workplace health and safety policies without individual employees expressly agreeing to those policies. Having regard to the criteria set out in *Village Gate*, an implied term permitting the City to implement workplace health and safety policies during the course of Mr. Clark's employment, which policies he would be required to abide by, is reasonable and equitable, is necessary to give business efficacy to the contract, is obvious, is capable of clear expression and does not contradict any express term of Mr. Clark's contract.

[10] Ultimately, the judge concluded there was an implied term in Mr. Clark's employment contract that the City was permitted to implement workplace health and safety policies during the course of Mr. Clark's employment, and that those workplace health and safety policies, including the MVP at issue, would apply to him.

[11] Having found that there was an implied term permitting the City to implement workplace health and safety policies, the judge then considered whether Mr. Clark's suspension was reasonable and justified given its nature and circumstances. The judge found the City had legitimate business reasons for imposing the consequence of an unpaid leave of absence for non-compliance with the vaccination policy and that it acted in good faith. Therefore, the MVP and Mr. Clark's resulting unpaid leave of absence were reasonable and justified.

[12] Because she found that the City did not breach Mr. Clark's employment contract, it was not necessary for the judge to consider the second part of the *Potter* test, namely whether a reasonable employee in Mr. Clark's shoes would have felt there was a substantial alteration of an essential term of the employment contract. Nevertheless, the judge noted that, had it been necessary to consider the second step, she would have found Mr. Clark's claim to have failed for reasons set out in para. 156 of *Parmar*.

Issue on appeal

[13] The appellant identifies only one alleged error in the judgment. He submits that the chambers judge erred in law by failing to apply the correct test to determine whether there was an implied term in his contract permitting the City to unilaterally implement an MVP.

[14] Later in his factum, the appellant appears to depart from his initial characterization of the alleged error, and argues that “the chambers judge applied the correct test—the *Village Gate* test—but to the wrong question”. Therefore, the alleged error appears to be that the judge erred in law because she considered only whether there was an implied term allowing the City to implement workplace health and safety policies, rather than considering whether there was an implied term allowing the City to implement an MVP.

[15] On either framing of the issue, the appellant implicitly argues that it was necessary for the chambers judge to find an implied term in the employment contract authorizing the City to implement an MVP in order for the City to avoid breaching his employment contract. The appellant submits that, absent such an implied term, the court would have to conclude that the City breached its employment contract with Mr. Clark when it placed him on unpaid leave.

[16] I would reframe the issues as follows:

- a) Did the judge err in failing to consider whether there was an implied term authorizing the City to implement specifically an MVP?
- b) If not, did the judge err in failing to find that the City breached its employment contract by suspending Mr. Clark for refusing to be vaccinated?

Analysis**Standard of review**

[17] The process for characterizing a question as legal, factual, or mixed fact and law is well established. Legal questions are questions about what the correct legal

test is; factual questions are questions about what actually took place between the parties; and mixed questions are questions about whether the facts satisfy the legal tests: *Teal Cedar Products Ltd. v. British Columbia*, 2017 SCC 32 at para. 43.

[18] Questions of mixed fact and law are subject to a standard of palpable and overriding error unless the appellant establishes an extricable question of law: *Mac's Convenience Stores Inc. v. Basyal*, 2025 BCCA 284 at para. 72, citing *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at para. 50.

[19] Because the appellant alleges that the judge applied the wrong legal test for determining the existence of an implied term in his employment contract, he submits that the appropriate standard of review is correctness. The respondent submits that the majority of the appellant's arguments on appeal constitute attempts to revisit factual findings of the summary trial judge, and that the judge's decision should be reviewed on a standard of palpable and overriding error.

[20] In my view, the appellant has raised a legal question on appeal. He argues that his administrative suspension for non-compliance with the MVP could only have been reasonable and justified if there was an implied term in the employment contract specifically authorizing the implementation of an MVP. This is a question about whether the judge applied the correct analytical approach to her consideration of constructive dismissal, and it should be reviewed on a standard of correctness.

[21] However, in addition to this legal question, the appellant challenges a number of factual findings of the chambers judge, including whether the City acted in good faith, and whether there were legitimate business reasons for the suspension. I agree with the respondent that, to the extent the appellant challenges these findings, they are subject to a standard of palpable and overriding error.

Did the judge err in failing to consider whether there was an implied term authorizing the City to implement an MVP?

[22] The appellant submits that the chambers judge's consideration of implied terms was deficient, because she only considered whether there was an implied

term permitting the City to implement workplace health and safety policies and she did not specifically consider whether there was an implied term permitting the City to implement MVPs.

[23] The chambers judge expressly rejected the appellant's framing of the issue, finding it unnecessary to consider whether the employment contract included an implied term specifically permitting the implementation of an MVP. Instead, she found it was appropriate to consider whether the employment contract contained an implied term permitting the City to implement workplace health and safety policies more broadly. She found that it did. She then made the factual finding that the MVP fell within the category of workplace health and safety policies permitted under the implied term of the employment contract. She went on to consider whether Mr. Clark's leave without pay pursuant to the vaccination policy was reasonable and justified under the contract.

[24] Consistent with *Potter*, the question the chambers judge asked herself was whether the administrative suspension was reasonable and justified:

[57] Like *Parmar*, there existed a contractual term (in that case express, in this case implied) permitting the implementation of certain workplace policies generally that would apply to the employee in question and with which the employee would be required to comply: *Parmar* at paras. 20(c), 88.

[58] Suspension without pay breaches the employment contract unless there is an express or implied contractual term permitting it: *Parmar* at para. 95. The question therefore becomes whether the City had the implied authority to suspend Mr. Clark for the administrative reasons it gave (*Potter* at para. 72), that is for non-compliance with the workplace health and safety policy that is in issue (i.e. the vaccination policy). That, in turn, depends on whether the administrative suspension pursuant to the policy was reasonable and justified, keeping in mind that, among other relevant factors, "legitimate business reasons constitute a requirement for a finding that an administrative suspension based on an implied authority to suspend is not wrongful": *Potter* at paras. 97-98; see also *Parmar* at paras. 96, 99.

[Emphasis added.]

[25] While it is true that the chambers judge did not engage in an analysis of whether there was an implied term specifically permitting the City to implement an MVP, in my view, this was unnecessary.

[26] This is because once the court found that there was an implied term allowing the City to implement workplace health and safety policies, the City's right to implement specific health and safety policies was subject only to the implied qualification that any such policy would be reasonable and lawful: *Parmar* at para. 88.

[27] The appellant's framing of the issue—that any specific workplace health and safety policy that does not meet the five conditions in *Village Gate* constitutes a breach of the employment contract—does not appear to be supported by the case authorities, and would lead to absurd results. For example, a workplace policy that requires restaurant employees to wash their hands regularly is not necessary to give effect to their employment contract but is clearly reasonable and justified.

[28] Once the chambers judge found an implied term allowing the employer to implement health and safety policies, she correctly moved to the next step in the analysis, and considered whether the MVP, and Mr. Clark's suspension for failing to comply with it, was reasonable and justified.

[29] The employer's broad power to implement workplace health and safety policies extended to developing a policy within the workplace to address the significant challenges presented to employers and the public by the COVID-19 crisis. To require an employer to consider the *Village Gate* conditions in these circumstances would be unreasonable.

[30] A focus on whether the MVP was reasonable and justified, rather than a search for an implied term authorizing a particular workplace health and safety policy, is consistent with the approach mandated by the Supreme Court of Canada in *Potter*:

[41] The uniqueness of the application of this first branch of the test is evident in cases involving administrative suspensions. In all cases, the primary burden will be on the employee to establish constructive dismissal, but where an administrative suspension is at issue, the burden will necessarily shift to the employer, which must then show that the suspension is justified. If the employer cannot do so, a breach will have been established,

and the burden will shift back to the employee at the second step of the analysis.

...

[86] Courts have developed a number of approaches to determining whether an administrative suspension is authorized by a contract. None of them apply directly to the situation in this case, but the principles on which they are all based are relevant. . . . All the courts in question have imposed on the employer a basic requirement of a good faith business justification. The factors they have applied include, but are not limited to, the existence of legitimate business reasons, good faith, the duration of the suspension, and whether the suspension was with pay. All the relevant factors go to the fundamental question whether the employer's decision to suspend was both reasonable and justified in the circumstances. As was made clear in *Cabiakman*, it is the employer that bears the burden of establishing that the suspension satisfies these two criteria (para. 67).

[Emphasis added.]

[31] In the circumstances, the judge applied the correct analytical framework to determining whether the employer breached the employment contract.

Did the judge err in failing to find that the City breached its employment contract by suspending Mr. Clark for refusing to be vaccinated?

[32] The judge undertook an extensive analysis of the reasonableness and justifiability of Mr. Clark's administrative suspension for failure to comply with the vaccine policy, including a consideration of the duration of the suspension, whether the suspension was with pay, applied in good faith, and for legitimate business reasons. Mr. Clark submits that the City lacked good faith and had no legitimate business reasons for the MVP. No new arguments were raised on appeal.

[33] While the appellant may disagree with the chambers judge's factual findings on these points, he has not identified any palpable and overriding error with respect to her findings.

Disposition

[34] For the foregoing reasons, I would dismiss the appeal.

[35] **ABRIOUX J.A.:** I agree.

[36] **MACNAUGHTON J.A.:** I agree.

[37] **ABRIOUX J.A.:** The appeal is dismissed.

“The Honourable Justice Francis”