

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Smith v. Investors Group Financial
Services Inc.*,
2026 BCSC 1310

Date: 20260714
Docket: S28755
Registry: Cranbrook

Between:

Jeffrey Michael Smith

Plaintiff

And

Investors Group Financial Services Inc.

Defendant

Before: The Honourable Justice L. Bennett

Reasons for Judgment

Counsel for the Plaintiff:

J. Lalonde

Counsel for the Defendant:

N. Lapper
T. Udwadia

Place and Date of Trial:

Kamloops, B.C.
September 8–12, 15-18, 2025,
January 20-23, 2026
and May 14, 2026

Place and Date of Judgment:

Cranbrook, B.C.
July 14, 2026

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Introduction

[1] The plaintiff, Jeffrey Michael Smith, is a former Regional Director (“RD”) of the defendant, Investors Group Financial Services Inc. (“IG”). Prior to his position as an RD, Mr. Smith was a Division Director (“DD”) for IG, and prior to that he was a consultant. Throughout his 14 years of service, Mr. Smith was highly regarded within the IG organization. His elevations within the company are reflective of his work achievements.

[2] On May 8, 2018, and as part of a nation-wide corporate restructuring, IG terminated Mr. Smith’s position as RD without notice and, in lieu, offered Mr. Smith an opportunity to return to his previous role of DD. Mr. Smith was taken by surprise and disappointed, but ultimately assumed his previous role as DD.

[3] Four months after resuming the DD role, Mr. Smith went on medical leave and subsequently qualified for long-term disability. He remained on long-term

disability until February 2020, at which time he accepted employment as a financial services advisor with TD Wealth.

[4] In his notice of civil claim filed November 15, 2018, Mr. Smith alleges that at all relevant times he was an employee of IG, or alternatively a dependent contractor. Accordingly, he seeks judgment against IG for all damages flowing from their breach of contract including but not limited to damages for wrongful dismissal and/or constructive dismissal, as well as aggravated and punitive damages.

Factual Background

[5] At the time of trial, Mr. Smith was 54 years of age. He resides in Victoria, British Columbia. Prior to his work with IG, he worked as a professional golfer and golf coach. During his golf career, he suffered a back injury that necessitated a career change. He made a personal connection through his former golfing affiliates, and that networking connection led him to IG in May 2004.

[6] Mr. Smith joined IG as a consultant. On May 17, 2004, he signed a four-page contract which outlined the nature of the working relationship, as well as the consultant's role and responsibilities (the "Consultant's Agreement"). The terms of the Consultant's Agreement were non-negotiable, and the relevant provisions read as follows:

THIS AGREEMENT made at Winnipeg, Manitoba, dated (mm/dd/yyyy) May, 17, 2004. Between Investors Group Financial Services Inc. ("IGFS"), and Jeff Smith ("the Consultant") #_____

[...]

1. CONSULTANT'S APPOINTMENT AND STATUS

IGFS hereby engages the Consultant as its agent to arrange for the distribution of the financial products and services offered or sponsored by IFS and/or its affiliated corporations, from time to time, and to collect and pay over to IGFS all payments received by the Consultant in connection with such activity. For greater certainty, the Consultant and IGFS agree that the Consultant is not an employee of IGFS and the relationship is one of principal and agent. Subject to the protection of IGFS' goodwill and regulatory responsibilities, the Consultant is free to exercise his/her own judgment as to the conduct of his/her business and is free to carry out his/her responsibilities at such times, at such places and in such manner as he/she sees fit.

The Consultant agrees that he/she will not distribute any products or services not offered or sponsored by IGFS and/or its affiliated corporations. The Consultant further acknowledges and agrees that all clients have a contractual relationship with IGFS and, that he/she owes a fiduciary duty to IGFS and he/she will not do anything to diminish IGFS' relationship with its clients.

2. CONSULTANT'S RESPONSIBILITIES

The Consultant agrees to carry out certain responsibilities in connection with arranging for the distribution of financial products and services offered or sponsored by IGFS and/or its affiliated corporations, including but not limited to:

(i) Rules, Regulations and Laws - to comply with all rules, regulations and policies that IGFS may prescribe from time to time regarding the conduct of the Consultant when he/she is carrying on business as an agent of IGFS which are necessary to protect the interests of IGFS or its clients, or to comply with any applicable law, rule, policy, ordinance or regulation, and any amendments thereto, issued by any applicable regulatory authority, including, without limitation, the Mutual Fund Dealers Association of Canada, the Investment Funds Institute of Canada, any other self-regulatory authority and any securities commission or any successor thereto;

(ii) Licenses, Registrations and Certificates - to obtain and maintain in good standing, at their own expense, any licenses, registrations and certificates required by law or any applicable regulatory authority in connection with the distribution of financial products and services offered or sponsored by IGFS and/or its affiliated corporations. In particular, the Consultant agrees not to interview prospective clients nor to solicit applications until he/she has secured all licenses required by law or any applicable regulatory authority;

(iii) Servicing - to provide, to any person who is a client of IGFS and/or one of its affiliated corporations who has been assigned to the Consultant, continuous service in keeping with the high standards required by IGFS;

(iv) Expenses - to pay all the expenses incurred in connection with the carrying on of the Consultant's obligations under this Agreement and not to incur any expense or liability chargeable to IGFS.

(v) Advertising - to not display or distribute, directly or indirectly, any advertising material, prospectus, circulars, letters, booklets, schedules, stationary, broadcasting or other literature concerning the financial products and services offered or sponsored by IGFS and/or one of its affiliated corporations unless the same has been approved in writing by the Head Office of IGFS; and

(vi) Inquiries, Complaints and Lawsuits - to cooperate fully with IFS and/or its insurers) in the investigation and/or defense of any inquiry made of, complaint or lawsuit brought against IGFS and/or its affiliated corporations or any issuer of a financial product or service offered or sponsored by IFS or any of its affiliated corporations by a client or regulatory authority in connection with any alleged breach, violation or non-performance

by the Consultant of any obligation contained in this Agreement. Notwithstanding the foregoing, IGFS shall have the right to participate in or assume control of the negotiations, settlement or defense of any complaint brought against it or lawsuit in which it has been named as a defendant.

(vii) Books and Records - to maintain the appropriate books and records as required by IGFS and the relevant securities legislation, rules, regulations and policies in relation thereto. Subject to paragraph 8, upon termination of this Agreement, or if so requested during the term of this Agreement by IGS or any relevant regulatory authority, to promptly surrender all such books and records which may be in the Consultant's control or possession.

[...]

10. TERMINATION

This Agreement may be terminated at any time by either party, with or without cause and with or without notice or any compensation in lieu of notice and, without limitation, may be terminated by IGFS upon the breach by the Consultant of any of the terms, conditions or provisos of this Agreement. On any termination or pending termination of a Consultant, IGFS shall provide its clients with the appropriate notice.

[7] After signing the Consultant's Agreement, IG required Mr. Smith to complete insurance licensing requirements and mutual fund training all of which IG either paid for up front or reimbursed. In the start-up period, IG also advanced Mr. Smith funds to supplement his income while he advertised and built up his client base.

[8] As a consultant, Mr. Smith's income was largely commission based. Commission was comprised of mutual fund sales and finder's fees associated with the sale of IG products. The specific compensation model was defined by IG policies all of which were designed to incentivize consultants to grow their client base. Consultants were compensated, both in terms of income and other bonus and benefit opportunities, commensurate to their sales performances.

[9] Over time, Mr. Smith developed a "book of business" containing his clients that established his income base. He also became a branch manager.

[10] In December 2006, and after two successful years as a consultant, Mr. Smith was offered the position of DD. As part of the transition, IG presented him with another contract all of which outlined the DD role and accompanying responsibilities that were in addition to the consultant role and responsibilities (the "DD Agreement").

The DD Agreement was not in evidence, but Mr. Smith's evidence was that it, too, was a non-negotiable agreement.

[11] As a DD, Mr. Smith's role changed significantly as did his compensation. He was permitted to keep his "book of business", but only 30% of the new role comprised of consultant duties while the other 70% focused on recruiting, training, and mentoring consultants. The new role also focussed on growing the company's division or "book" through the recruitment of new consultants and through an increased asset base.

[12] As a DD, Mr. Smith derived his income in part from new business as well as from "trailing revenue" from the books of business. IG paid that revenue to Mr. Smith through a formula and compensation method defined exclusively by IG. In essence, the more asset wealth attained by the consultants who worked under him, the more income Mr. Smith earned as a DD.

[13] Mr. Smith served in the DD role for the next six years. In that time, he grew his division, established a satellite office, hired an assistant, and earned a national sales award for his overall achievements.

[14] Shortly after attaining national recognition for his achievements, Mr. Smith became the successful applicant for the premier position of RD.

[15] Mr. Smith described the RD position as a pivotal position that was the "voice and face" of IG. The RDs managed the DDs of the region and ensured that their assigned region operated successfully. The RD position did not include any consultant duties (unlike the DD position), and consequently Mr. Smith was required to divest himself of all clients except for his family members.

[16] On July 1, 2012, Mr. Smith signed his third non-negotiable contract with IG (the "RD Agreement"). The RD agreement contained the following clauses germane to this matter:

2. CONSULTANT'S AGREEMENT

This Agreement is in addition to the Consultant's Agreement between the parties hereto.

3. REGIONAL DIRECTOR'S STATUS

The Regional Director shall carry out the responsibilities set out herein as an independent contractor and without interference from Investors, except that Investors may from time to time prescribe rules and regulations respecting the conduct of the Regional Director's business which are necessary to protect the interests of Investors or its clients or to comply with any law, ordinance or regulation, or with any resolution of the Investment Funds Institute of Canada which has been adopted by Investors, governing or relating to the conduct of Investors' business.

[...]

9. TERMINATION

This Agreement may be terminated at any time by either party, with or without cause and with or without notice, and is automatically terminated either upon the termination of the Consultant's Agreement between the parties hereto or upon the breach by the Regional Director of any of the terms, conditions or provisions of the said Consultant's Agreement or of this Agreement.

[17] Mr. Smith testified that as an RD he enjoyed even greater income earning potential, all of which IG also calculated pursuant to an IG created formula. That formula took into consideration the size of the region's asset base. Mr. Smith received two different, bi-weekly payments based on that formula, combined with quarterly bonuses that were based on his individual performance.

[18] Mr. Smith held the position of RD until May 2018. In that time, his self-employment earnings were as follows:

- a) 2013: \$388,255
- b) 2014: \$392,017
- c) 2015: \$404,475
- d) 2016: \$426,320
- e) 2017: \$430,568

[19] As an RD, Mr. Smith was also entitled to participate in the RD assured-value program (“RDAVP”), a program through which IG compensates RDs when they leave their RD role or when consultants transfer to a different region. Through this program, former RDs receive monthly payments calculated on a formula that takes into account commission earnings, tenure, and achievement level for their consultants among other factors. RDs are not eligible for the RDAVP if they leave IG to work for a competitor or if they are removed from the RD role for a violation of company policies or industry regulations.

[20] On May 7, 2018, Mr. Smith received a work email requiring him to meet with his area vice president, Darryl Gossen. At the May 8, 2018 meeting, and without any prior notice, Mr. Gossen terminated Mr. Smith’s RD agreement.

[21] Mr. Smith was taken by surprise and was understandably upset. He left the office and did not return for a few weeks.

[22] Over this period, Mr. Smith learned that he had been replaced as RD by one of his RD colleagues, Todd Walsh. Mr. Smith learned that the change was a result of IG’s national restructuring whereby the company combined regions to reduce the overall number of RDs. The effect of the restructuring, in the Victoria region, resulted in the elimination of one of the two RD positions. IG chose Mr. Walsh over Mr. Smith as the remaining RD, and offered Mr. Smith his former position of DD.

[23] Ultimately, Mr. Smith accepted his former role, albeit aggrievedly.

[24] After resuming the DD role, Mr. Smith began to experience mental health issues. Approximately four months after accepting the DD position, in September 2018, he went on medical leave after being diagnosed with work-related depression and anxiety. He subsequently applied for and became eligible for long-term disability through IG’s disability plan with Great West Life. Mr. Smith received long-term disability benefits for about one year in addition to payments of a similar amount through the RDAVP.

[25] Around March 2020, Mr. Smith's RDAVP ceased. This occurred around the same time that Mr. Smith obtained new employment with TD Wealth.

Positions of the Parties

[26] Mr. Smith's allegation of wrongful dismissal assumes that he was an employee or, in the alternative, a dependent contractor either of which would presumptively entitle him to notice or payment in lieu of notice. Accordingly, Mr. Smith submits that the first issue for the court to consider is whether he was, in fact, an employee or dependent contractor versus an independent contractor. Assuming that the court sides with Mr. Smith on this issue, Mr. Smith submits the next step in the analysis requires the court to determine whether Mr. Smith was wrongfully or constructively dismissed. This will require the court to consider whether the termination provision in the RD Agreement rebuts the presumption of common law notice arising from the termination or, in the alternative, the court will need to determine whether the termination provision was unconscionable.

[27] IG submits that there is no need for the court to undertake an analysis of Mr. Smith's working status, and further submits this case can be more easily resolved by starting with a determination of whether Mr. Smith was constructively dismissed. If the court finds that he was, only then does the court need to assess the nature of the working relationship. If the court finds that Mr. Smith was not constructively dismissed, then his claim must fail.

[28] IG submits that the nature of Mr. Smith's working relationship is irrelevant to the constructive dismissal argument because, even if he was an employee or dependent contractor, he was not entitled to notice in any event given that (a) he acquiesced to the DD position and (b) the termination clause was valid.

Issues

[29] Having considered the positions of the parties and the submissions of counsel, I find the main issue before me is whether or not IG constructively

dismissed Mr. Smith. In deciding this issue, I must also consider whether Mr. Smith acquiesced to his former position of DD.

[30] If Mr. Smith was constructively dismissed, only then do I need to determine the nature of the working relationship and to what extent, if any, Mr. Smith suffered loss and damages.

[31] If Mr. Smith was not constructively dismissed and that he acquiesced to the new position, then his underlying cause of action must fail.

Witnesses & Credibility

[32] The plaintiff's case consisted of the following witnesses:

- a) Mr. Smith;
- b) Karl Rebner (adverse witness);
- c) Jesse Harris;
- d) Jamie Vermeeren; and
- e) Mr. Stephen Cheng (expert witness).

[33] The defendant's case consisted of the following witnesses:

- a) Darryl Gossen;
- b) Gail Purcell; and
- c) Spencer Cotton (expert witness).

[34] In order to determine the issues, I will first consider any issues of credibility and reliability that have arisen with respect to the various lay witnesses. I will consider the expert witness testimony if and as necessary as their evidence was limited to the issue of damages.

Jeffrey Michael Smith

[35] Mr. Smith gave considerable evidence regarding his engagement and tenure with IG. His testimony relevant to those issues included that:

- a) In May 2004, he was offered and accepted the position of a consultant. He was required to sign and return the contract promptly. He was excited to start, and so he signed and returned the Consultant's Agreement in a timely manner. He did not seek any legal advice prior to signing the agreement, nor did he raise any issues or questions with regard to the contents of the Consultant's Agreement;
- b) When Mr. Smith was promoted to DD in December 2006, he was equally eager to start his new duties. He signed and returned the DD Agreement in short order. He did not seek any legal advice prior to doing so, nor did he raise any issues or questions with regard to the contents of the DD Agreement;
- c) During his time with IG, and in particular during his time as a DD, Mr. Smith became familiar with consultant agreements. He acknowledged that these agreements were an integral part of the recruitment process for new consultants and he delivered them to new consultants to sign and complete;
- d) In his last year as a DD and prior to being promoted to RD, Mr. Smith was ranked in the "top 13" category for DD performance;
- e) On July 1, 2012, Mr. Smith entered into his third agreement with IG after being offered the RD position. In reference to the RD Agreement, he said he signed it and sent it back. He acknowledged that the RD Agreement appeared similar, in form at least, to the previous IG agreements that he signed;

- f) Mr. Smith's evidence is that he always considered himself to be an employee of IG, and so when he signed the RD Agreement, he did not recall the "independent contractor" status jumping out at him when he read the contract. He described the RD Agreement as non-negotiable in any event, just like the other IG agreements that he had signed;
- g) He testified that nothing else stood out to him about the terms of the RD Agreement. As with the two other agreements, he again had the opportunity to seek legal advice on the agreement prior to signing, and to ask questions. He did neither. He said he read the document and signed it. He explained his excitement about the new position, and testified that he signed and returned the contract in short order because he knew that other qualified individuals within the company would readily jump on the opportunity if he did not accept it;
- h) In discussing his eligibility and enrollment into the RDAVP compensation plan, Mr. Smith testified that he understood that if he left IG, or was removed from his role, or if he left IG due to violations of industry regulations or company policies, that the RDAVP would no longer be available to him;
- i) Following his removal from the RD role on May 8, 2018, Mr. Smith acknowledged that IG terminated two other DD Agreements in order to make a DD position for him. Nonetheless, he described how he felt blindsided upon IG removing him as an RD, and expressed concern that IG had never expressed any performance or other concerns about his work. To the contrary, he testified how IG always commended and recognized him for his performance. He described the "demotion" as "gut wrenching";
- j) Notwithstanding his upset, Mr. Smith explained that he accepted the new position because at the end of the day he loved working for IG, had been there for 14 years, he had success previously as a DD, and he was

assured a “soft landing”. Specifically, IG assured him that they would take certain actions to ensure that he retained significant earning potential as a DD;

- k) Mr. Smith testified that, after accepting the DD position, he determined that what IG offered him was not going to amount to much in terms of compensation. He became concerned about the validity of the earning potential given the roadmap that IG had laid out. He testified that IG vastly changed their compensation model. He testified that because of the changed model, it would take him several years (if it were at all possible) to earn compensation comparable to what he had previously earned as a DD. As such, he saw the new DD role as a demotion with a significant pay cut;
- l) Mr. Smith testified that he also viewed the actions and directions of his new RD, Mr. Walsh, as toxic. He gave an example of how Mr. Walsh tasked him, right at the outset of his new DD position, with the obligation of terminating a long-standing consultant;
- m) Mr. Smith testified that the new IG culture was not the kind of culture he valued, and he started to lose all interest with being in that office;
- n) It was not long before Karl Rebner replaced Mr. Walsh. Mr. Smith explained how the IG vice president required Mr. Smith to tour Mr. Rebner through the Victoria office in an effort to introduce Mr. Rebner to the other consultants. Mr. Smith described how he found it humiliating and embarrassing to have to introduce his replacement to his old co-workers, and testified that he understood his old co-workers felt equal discomfort by this;
- o) In describing how the IG culture had worsened, Mr. Smith gave a further example of Mr. Rebner unnecessarily sharing the news about Mr. Smith’s need to go on long-term disability with other IG staff;

- p) With regard to the cessation of the RDAVP payments, Mr. Smith testified that he was supposed to receive those payments for 60 months (until April 2025), but they ceased, without cause, around February 18, 2020. In cross-examination, he acknowledged the timing of the stopped payments coincided with the timing of his new employment with TD Wealth but argued that he was entitled to the RDAVP payments just the same because, in his view, the payments were similar to a retirement pension; and
- q) Mr. Smith testified about the *Form 33-109F1 Notice of Termination Information for an Individual*. In direct, he was asked about the comment on page 2 which indicates: “*Reason for termination/cessation: Resigned – voluntary*”. Mr. Smith’s evidence was that he recalled receiving that statement, and agreed that he resigned from his employment from IG. He explained that as of May 8, 2018, he knew he could not go back to IG, so at the time he considered himself to have resigned. In retrospect, he now believes he was terminated. His evidence was that he has a much clearer picture now of what actually happened in 2018 than he did then.
- [36] Having considered the evidence of Mr. Smith, I make the following findings:
- a) Mr. Smith is a professional with several years of variable experience in the financial industry. Notwithstanding, he habitually signed critical pieces of documentation, admittedly and without reservation, quickly and without question or reservation. For example:

throughout his evidence, and in relation to the various IG agreements that he signed over the years, he repeatedly answered with words to the effect of, “I read the form and signed it”. When challenged specifically about parts of the agreements that appear obvious on their face (such as the independent contractor status of the RD agreement or the right of IG to terminate the various contracts without notice), Mr. Smith answered exactly the same; and

- i. Mr. Smith gave a similar response (“I reviewed the form, signed the form...”) when asked about his income tax returns. For instance, despite that Mr. Smith always reported his income as “self-employment” he refused to acknowledge any awareness of ever doing so. His explanation that he did “not cautiously think...” about how he reported his income does not align with his expertise as a financial specialist, nor with the evidence he gave about how he ran his business. When pressed on this point during cross-examination, it was evident that Mr. Smith was at a loss for words. He could not explain his seemingly cavalier approach to reviewing and signing important documents;
- b) Mr. Smith acknowledged having extensive familiarity with the various IG contracts, much of which he developed during his six years as DD (when a substantial part of his role was to recruit and sign new consultants). That evidence, however, did not flow with his evidence that he did not know or understand that his 2004 Consultant Agreement remained active throughout his time at IG;
- c) Likewise, Mr. Smith’s evidence that suggested unfamiliarity with the germane terms of the contracts did not flow, and Mr. Smith avoided any opportunity to try to explain himself. For instance, in cross-examination, when defendant’s counsel suggested that Mr. Smith ought to have known from his years of IG experience that he could be terminated at any time without notice, Mr. Smith repeated that he, “read the [RD Agreement] and signed it”;
- d) When Mr. Smith was challenged in cross-examination about whether he knew that he also could terminate his working relationship with IG at any time, he indicated that he knew that, yet denied that he terminated his working relationship with IG when he went to work for TD Wealth in 2020. Again, his explanation for leaving IG to work for TD Wealth did not flow;

his evidence was that IG had already terminated him on May 8, 2018, yet he also acknowledged that as of June 2018, he had entered into a new DD agreement with IG;

- e) Mr. Smith's assumption that he was terminated on May 8, 2018, also fails to take into consideration that he remained eligible for and did receive disability benefits with IG through Great West Life up until he became employed with TD Wealth. Had the working relationship terminated prior to that point, Mr. Smith's disability benefits would have ceased; and
- f) In direct, he acknowledged that he voluntarily resigned from IG and, confirmed that his *Form 33-109F1 Notice of Termination* was accurate in that respect.

[37] When I consider Mr. Smith's evidence as a whole, he demonstrated a clear reluctance to answer with transparency. His repetitive and defensive responses to the effect of "I read it and signed it", when he testified about the various IG agreements, his income taxes, or the RDAVP agreements, demonstrated his evasiveness to provide a candid account of the factual background, all of which impacted the credibility and reliability of his evidence.

Karl Rebner

[38] As noted above, Mr. Rebner is the former RD who took over from Mr. Walsh. His evidence in direct focused on the cautionary measures and risk assessments that he said he appropriately considered when he accepted the RD role. He gave detailed evidence that differentiated the roles and responsibilities of his RD position and the RD position previously held by Mr. Smith.

[39] However, when it came to providing details that might assist Mr. Smith's claims, Mr. Rebner claimed to have no recollection. For example, he claimed to have no knowledge, even generally, about his earning potential as RD income compared with the RD position as it existed prior to the corporate restructuring. He denied any recollection of his own income for the current or previous years.

[40] It was apparent to me that Mr. Rebner focused his evidence solely on advancing IG's position, and that he was intentionally withholding evidence that may have assisted Mr. Smith's claims. Overall, I found his evidence to be of little value.

Jesse Harris

[41] Jesse Harris is a current consultant of IG. He was also affected by the corporate restructuring, and was moved from DD back down to a consultant when Todd Walsh was RD. Mr. Harris spoke about his interactions with Mr. Smith when Mr. Smith stepped out of the RD role, and also spoke about how he took over some of Mr. Smith's clients after Mr. Smith went on medical leave in September 2018.

[42] Mr. Harris gave evidence relevant to Mr. Smith's assertion that IG had not provided him with a sustainable DD plan. Specifically, Mr. Harris testified about the status of the specific account base that IG assigned to Mr. Smith when he resumed his former DD position. In response to Mr. Smith's concerns that the account base was not sustainable because those clients were leaving, Mr. Smith stated those same clients, "... hadn't started to leave yet".

[43] Mr. Harris confirmed that Ms. Smith's office was left "intact", with Mr. Smith's name remaining on his door, for about six months to a year after Mr. Smith went on medical leave.

[44] I found no issues with Mr. Harris' evidence, nor did counsel raise any issues with respect to his credibility or reliability. Mr. Harris answered all questions that were put to him clearly and candidly.

Jamie Vermeeren

[45] Jamie Vermeeren was with IG from 2003 to 2020 and served as RD for 14 years. Mr. Vermeeren repeatedly referred to his former position as a contract of "employment". He told the court his "employment" ended in 2020, when he found out he was "getting canned in an email" written by the chief executive officer. He summarized the termination email as something to the effect of "congratulations on stepping down...it's my pleasure...congratulations".

[46] Mr. Vermeeren is involved in his own ongoing litigation with IG wherein he has made similar claims for wrongful dismissal. He testified with confidence, and in a manner that appeared to be an attempt to prove his own case through Mr. Smith's case or vice versa.

[47] I did not find his evidence helpful.

Darryl Gossen

[48] Darryl Gossen has been with IG since 1992 and worked as a consultant, DD, RD, vice president ("VP") for Western Canada, and VP of Private Wealth Management. As of October 2022, he holds the position of VP of IG.

[49] Mr. Gossen spoke of Mr. Smith's history with the company and took the court through how the various IG roles operate.

[50] With regard to the 2017 and 2018 corporate restructurings, Mr. Gossen explained that IG consolidated about 20 regions and eliminated about 20 RDs as a result. He explained that the decision to remove Mr. Smith as RD was not his to make although he did recommend that Mr. Smith be eliminated. He said he based that recommendation solely on where Mr. Smith was in the region rankings. His evidence was that Mr. Walsh out-performed Mr. Smith for 2015, 2016 and 2017, and IG made a decision on that basis.

[51] Mr. Gossen testified that for those RDs that were not kept on, IG met with them (all) and offered them other roles within the company. His evidence is that not all stayed with IG. He testified that many of the individuals who did stay are "more successful today than they were as RDs". He explained how the achievement level of certain RDs who moved to DDs (like Mr. Smith) was set to "AL6" for the first two years, and that they would drop no more than one level per year moving forward. He explained how IG also qualified the removed RDs who became DDs as a "business qualifier" – meaning that they were qualified to enter into the private wealth division. He explained how IG provided coaching, how IG positioned the ex-RDs to an

existing division where possible, and how IG assigned clients and did their best to move assets to ex-RDs.

[52] Mr. Gossen explained how IG assigned approximately \$20,000,000 worth of assets to Mr. Smith, and how as an added bonus Mr. Smith did not have to pay assured value for the transition of those clients. Mr. Gossen explained that discounted rates were offered to those clients assigned to Mr. Smith in an effort to entice them to stay with IG, and he also testified how Mr. Smith was eligible to receive other clients/servicing responsibilities so long as he was a consultant in good standing.

[53] In terms of the RDAVP, Mr. Gossen explained that the plan is not a retirement product. He testified that it has eligibility requirements which must be met in order for funds to be paid out.

[54] I found Mr. Gossen's evidence to be thorough, concise, and detailed when he answered questions that supported IG's position. However, when asked questions that might otherwise assist Mr. Smith's case, Mr. Gossen responded either with blanket denials or claimed not to have any knowledge. For instance, he appeared very unwilling to provide answers when asked about the ultimate outcome of the client base assigned to Mr. Smith. I found his aversion to these questions particularly puzzling because if anyone would have been in a position to answer questions on the issue of whether IG put together a sustainable DD plan for Mr. Smith, it would have been Mr. Gossen. Instead, he routinely responded with "I don't know". Given the wide scope of his role, I found Mr. Gossen's avoidance of answers on these topics troubling, and ultimately it impacted his credibility and reliability.

Gail Purcell

[55] The last lay witness to testify was Gail Purcell. Ms. Purcell has been with IG since 1983 and is the company's assistant VP of compensation. Her role includes responsibility for administering compensation and for updating and administering compensation policies. Consequently, she is extremely familiar with its compensation policies for consultants, DDs and RDs.

[56] Ms. Purcell spoke at length about the RDAVP and explained how it is valued based on performance. She explained how the RDAVP value is tied to the performance of the RDs' region, and further explained how Mr. Smith would have remained eligible to have been paid out on the assured value of his region that he had previously developed as a RD had he remained eligible.

[57] She spoke about the requirements of eligibility and explained how certain events trigger ineligibility such as if the RD leaves IG to work for competition. She acknowledged that "competitor" is not an actual defined term in the RDAVP compensation guide, but said it is explained in the guide as "if they work for another financial services company" and also "if we consider them to be working for a competitor".

[58] Ms. Purcell testified that the terms around the RDAVP have not changed over the last decade.

[59] Ms. Purcell also spoke about the general nature of IG contracts. She acknowledged that the contracts restrict consultants from working for other financial services companies, and stated that if Mr. Smith wanted to work for a competitor, he would have been free to do so, but in that case would no longer be eligible for RDAVP payments. She stated he "entered into the rule knowing what the restrictions are ...", and said the payments were a "benefit of the contract" should he have complied. She denied any suggestion that the payments were benefits of "employment".

[60] Ms. Purcell spoke about the earnings of DDs and stated that they have several DDs that earn more than RDs and many consultants who earn more than DDs. She did not agree that the move from RD to a DD was a "demotion", and explained that there would have been opportunity for Mr. Smith to be successful in the DD role again had he stayed.

[61] Finally, she testified about her communications with Mr. Smith following his removal as RD. She stated that when Mr. Smith was removed as RD, he accepted the role of DD “subject only to working out the details of his remuneration”.

[62] I found Ms. Purcell to be deeply knowledgeable. She was not argumentative, and did not appear to embellish her answers. It was evident to me that she limited her responses to areas that were only within her knowledge. She candidly answered all questions that were put to her in direct and in cross-examination. Her answers were consistent throughout and flowed. Overall, her evidence did not raise any issues of credibility or reliability.

Analysis

Was Mr. Smith constructively dismissed, or did he acquiesce to the new position of Division Director?

[63] The test on constructive dismissal is set out in *Farber v Royal Trust Co.*, [1997] 1 S.C.R. 846 (S.C.C.) [*Farber*] and more recently in *Potter v New Brunswick Legal Aid Services Commission*, 2015 SCC 10 [*Potter*].

[64] As noted in *Farber*, a constructive dismissal occurs when an employer unilaterally makes a substantial change to the essential terms of an employee’s contract of employment. Through that substantial change to the contract, an employer is said to have ceased to meet its obligations and therefore to have terminated the contract.

[65] In *Potter*, the Supreme Court of Canada expanded the definition and established two methods or “branches” to determine whether a constructive dismissal has occurred: (1) where an employer makes a unilateral change that breaches the employment contract, and that breach alters an essential term of the contract, as determined by a reasonable person in the same situation as the employee; or (2) when viewed in light of the circumstances, the conduct would lead a reasonable person to conclude that the employer no longer intended to be bound by the terms of the contract.

[66] The Supreme Court of Canada stated additional clarifying factors at paras. 30–31, 37, 39, 42, 44, 52, and 66:

[30] When an employer's conduct evinces an intention no longer to be bound by the employment contract, the employee has the choice of either accepting that conduct or changes made by the employer, or treating the conduct or changes as a repudiation of the contract by the employer and suing for wrongful dismissal. ...

[31] The burden rests on the employee to establish that he or she has been constructively dismissed. If the employee is successful, he or she is then entitled to damages in lieu of reasonable notice of termination. ...

[...]

[37] At the first step of the analysis, the court must determine objectively whether a breach has occurred. To do so, it must ascertain whether the employer has unilaterally changed the contract. If an express or an implied term gives the employer the authority to make the change, or if the employee consents to or acquiesces in it, the change is not a unilateral act and therefore will not constitute a breach. If so, it does not amount to constructive dismissal. Moreover, to qualify as a breach, the change must be detrimental to the employee.

[...]

[39] Once it has been objectively established that a breach has occurred, the court must turn to the second step of the analysis and ask whether, "at the time the [breach occurred], a reasonable person in the same situation as the employee would have felt that the essential terms of the employment contract were being substantially changed" (*Farber*, at para. 26). A breach that is minor in that it could not be perceived as having substantially changed an essential term of the contract does not amount to constructive dismissal.

[...]

[42] The second branch of the test for constructive dismissal necessarily requires a different approach. In cases in which this branch of the test applies, constructive dismissal consists of conduct that, when viewed in the light of all the circumstances, would lead a reasonable person to conclude that the employer no longer intended to be bound by the terms of the contract. The employee is not required to point to an actual specific substantial change in compensation, work assignments, or so on, that on its own constitutes a substantial breach. The focus is on whether a course of conduct pursued by the employer "evinces an intention no longer to be bound by the contract": *Rubel Bronze*, at p. 322. A course of conduct that does evince such an intention amounts cumulatively to an actual breach. Gonthier J. said the following in this regard in *Farber*: ...

[...]

[44] ...I agree that the question whether the suspension amounted to constructive dismissal turns in part on whether it was authorized by the contract. If there was an express or an implied term that authorized the Board

to suspend Mr. Potter as it did, then there was no unilateral act and, therefore, no breach of the contract — let alone a substantial change to the essential terms of the contract — and the constructive dismissal claim must fail.

[...]

[52] If the Commission had the authority under the contract to suspend Mr. Potter for the administrative reasons it gave, then the contract was not breached and Mr. Potter's constructive dismissal claim must fail. ...

[...]

[66] When faced with a unilateral change by the employer, the employee is placed in the unenviable situation of having to decide whether to accept the change or to resign and bring an action for constructive dismissal: see *Belton v. Liberty Insurance Co. of Canada* (2004), 2004 CanLII 6668 (ON CA), 72 O.R. (3d) 81 (C.A.), at paras. 25-26. This life-altering decision must be made in circumstances in which the information available to the employee is limited and there is an imbalance of power between the employer and the employee. As was made clear in *Farber*, it would be unfair to rely on information that undermines the employee's claim and that the employee did not know about or could not be expected to have foreseen. In *Farber*, as I mentioned above, Gonthier J. first determined that a breach had occurred — the employee had been confronted with a unilateral change that involved “a significant, even a serious, demotion” (para. 38). He then inquired into whether the demotion constituted a substantial change to the essential terms of the employment contract. The employer argued that because the commission the employee would actually have earned in the new position had turned out to be higher than the amount he would have earned had he remained in his former position, the demotion did not constitute a substantial change. Gonthier J. held that this evidence should be excluded, however, on the basis that a court must not, in determining whether a breach is substantial, consider evidence consisting of information that was neither known to the employee nor reasonably foreseeable.

[67] Mr. Smith's position is that IG unilaterally and materially changed the term of the RD Agreement by removing him as RD and by offering him the opportunity to return to his former position of DD. He described the change to his work as a “demotion”, and attempted to lead evidence from other witnesses on this point.

[68] Although there were some changes to Mr. Smith's workplace responsibilities prior to his going on medical leave, the evidence of various witnesses (including the evidence of Mr. Harris, Mr. Gossen, and Ms. Purcell) confirms that Mr. Smith still had significant earning potential as a DD before he went on medical leave. The client base that IG had assigned to him as part of the “soft landing” had not yet left, and lucrative financial opportunities still existed.

[69] Moreover, and for reasons that are unclear, and despite introducing volumes of evidence at this trial, Mr. Smith introduced no evidence that would allow the court to compare his original (pre-2012) DD earnings to his subsequent DD earnings and/or earning potential. This void of evidence is significant particularly when I consider the evidence that confirms Mr. Smith's assigned asset base was still worth about \$20 million prior to his going on medical leave.

[70] The change to Mr. Smith's position, brought about by the 2017 and 2018 national restructuring, undoubtedly impacted how Mr. Smith viewed himself in the eyes of the company he had long worked with. Understandably, he felt demoted despite his years of hard work, recognized achievements, and persistent advancements within IG. His experience with IG had always been positive. He recognized that as well, and so was reluctant to leave the company even after they removed him as RD. Despite his personal and understandable frustrations with the circumstances that he found himself in, he was still prepared to work with IG even if that meant working in the DD role.

[71] Moreover, Mr. Smith's perception of what occurred within the IG organization fails to recognize that, whether he was an employee, dependent contractor or independent contractor, an organization is entitled to reorganize their workplace and reassign workers as circumstances require. In the case of employers, surely they are entitled to restructure their affairs from time to time and change some of the job responsibilities of an employee within that operation without such a change constituting a repudiation of the employee's contract. Courts across Canada, including this court, have recognized that ability and have stated the fact of such restructuring does not, in and of itself, mean a constructive dismissal has occurred: *Gillespie v Ontario Motor League Toronto Club*, 1980 CarswellOnt 3638 (O.N.H.C.J.) at para. 18, and *Meyers v Chevron Canada Ltd*, 2013 BCSC 420.

[72] With this in mind, and although Mr. Smith's job title and position changed, I find the evidence he led on behalf of his case is insufficient to establish that there were material changes to his contract.

[73] If, however, I am wrong, and even if I were to find that the move from RD to DD constituted a material change to the working relationship such that constructive dismissal is made out, a person cannot be successful on a claim for constructive dismissal if they are found to have “acquiesced” to any changes made to their employment contract. In other words, a constructive dismissal must be a “unilateral” change to the employment contract, and it cannot be said that a change is unilateral if both sides consented to it.

[74] As noted above, the Supreme Court of Canada discussed this concept in *Potter* at para. 37. This concept was also discussed in *Kafka v. Allstate Insurance Co. of Canada*, 2011 ONSC 2305 at para. 22, where the Court concluded that in order to avoid a finding of acquiescence following a substantial change to their employment, a plaintiff must have made an unambiguous decision to treat the employment contract as irreparably broken and must leave that employment:

[22] The employee must make a “timely election as to whether or not to accept the unilateral alteration made by the employer.” If “a clear and unequivocal rejection” is not communicated, the employee risks being viewed as condoning the changes. (Echlin and Fantini at pp. 42-3)

[75] The “timely election” takes different forms depending on the context of the working relationship. In *Farquhar v. Butler Brothers Supplies Ltd.*, [1988] CarswellBC 46 (B.C.C.A), Justice Lambert, wrote:

A constructive dismissal occurs when the employer commits either a present breach or an anticipatory breach of a fundamental term of a contract of employment, thereby giving the employee a right, but not an obligation, to treat the employment contract as being at an end. See *Reber v. Lloyds Bank* (1985), 1985 CanLII 153 (BC CA), 61 B.C.L.R. 361 (B.C.C.A.). The employee's decision must be made within a reasonable time. But he is entitled to a few days, or even a couple of weeks, to think it over.

[Emphasis added.]

[76] In the recent case of *Chowne v Timesing Education Group Inc.*, 2025 BCSC 1196, Justice Chan found that a plaintiff had acquiesced to a new position even through equivocal communication and after only working at the new position for a few days. Justice Chan did not find constructive dismissal in this case even though

the plaintiff changed his mind and later purported to not accept the change in position.

[77] In Mr. Smith's case, he did not return to the office for about three weeks after he was removed as RD. Presumably during that time, he had the opportunity to weigh his options and to consider whether he should return to a position with which he was already well familiar. Presumably during that time, he had the opportunity to seek legal advice. In fact, the evidence supports that he was encouraged to seek legal advice. He did not, however, and instead signed a DD Agreement with which he was already well familiar.

[78] The evidence satisfies me that Mr. Smith signed a new DD Agreement because he knew lucrative financial opportunities existed with IG even as a DD. He had the benefit of his past experience to draw from and presumably relied on that past experience. He explained his decision to go back. He said he "loved working there" and he understood that the business he would have had access to as a DD would provide him with sufficient income.

[79] Mr. Smith was unequivocal in his evidence that he accepted and went back to the DD role. The evidence confirms that, despite whatever reservations he may have had, he conveyed no mixed communications about that. He signed a new DD agreement and started in his former position on or about June 1, 2018. In his June 7, 2018 email to Gail Purcell, Mr. Smith communicated his acceptance of his position.

[80] Mr. Smith then occupied that role for approximately four months before taking a medical leave.

[81] During his medical leave, Mr. Smith continuously advised IG and medical professionals that he would be returning to IG. For that reason, his office and belongings remained intact, with his name plate on the door.

[82] He continued to hold himself out as a DD at IG in his application materials for new contracts, and on his LinkedIn account. In that time, he continued to be compensated as a DD, and received RDAVP payments on a monthly basis which

resulted in substantial additional earnings that Mr. Smith could only receive as a result of being a DD.

[83] Altogether, Mr. Smith spent 20 months as either a DD or as someone accessing IG benefits through the DD position before alleging constructive dismissal.

[84] Ultimately, I do not need to look any further than Mr. Smith's own evidence in direct to conclude that he acquiesced to the change to the parties' working relationship, and to conclude that he voluntarily retired from IG. While his evidence also confirms that he has had a change of heart, it is too late for that, and his change of heart is undermined by his conduct in any event.

Was the termination clause valid?

[85] Given my finding that Mr. Smith was not constructively dismissed, I need go no further. However, I will consider the validity of the termination clause given the significant issues that Mr. Smith raised with it.

[86] For starters, even if Mr. Smith were an employee, he would not be covered by the *Employment Standards Act*, R.S.B.C. 1996, c. 113 [ESA] in these circumstances given s. 31(n) of the *Employment Standards Regulation*, BC Reg 396/95 [ESR]. That section provides that financial advisors registered under s. 35 of the *Securities Act*, S.B.C. 2004, c. 43 [SA] are not covered by the protections of the ESA.

[87] The evidence of Mr. Smith, Gail Purcell and of Daryll Gossen is consistent on this point and confirms that Mr. Smith was at all relevant times a person registered under s. 35 of the SA.

[88] Said differently, there is no way to get around the fact that the ESA does not apply to Mr. Smith's circumstances, and his counsel could not direct me to any statutory or common law rule that would suggest some degree of notice is nevertheless required, in the face of a contractual agreement that says otherwise.

[89] In the circumstances, there was nothing prohibiting Mr. Smith from freely entering into a contractual termination clause that allowed IG to terminate his

working relationship (regardless of whether he was an employee or dependent contractor) without cause and without notice. Mr. Smith did exactly that.

[90] Each time Mr. Smith entered a new contract with IG, he “read and signed the contract”. I conclude that he not only read and signed it, but also that he understood and agreed to the terms. In this case, the notice period that he agreed to was none. Given his years of experience with IG, and his acknowledged familiarity with IG’s engagement contracts, any other conclusion is neither plausible nor realistic. As such, I further conclude that the termination clause is valid and must, by default, govern.

[91] Interestingly, my conclusion on this issue aligns with a New Brunswick trial and appellate decision involving this same issue with another Investor’s Group defendant. In *Johnson v Investors Group Financial Services Inc.*, [2000] 227 NBR (2d) 49 (N.B.C.A.), trial decision indexed as [1999] 217 NBR (2d) 317 (N.B.Q.B.) [*Johnson*], the New Brunswick Court of Appeal upheld a virtually identical termination clause in the parties’ agreement. In *Johnson*, the clause was entirely determinative of that plaintiff’s wrongful dismissal claim, resulting in the claim being dismissed.

Conclusion

[92] Mr. Smith’s claims are dismissed.

Costs

[93] As the successful party, IG is presumably entitled to costs. If either party wishes to make different submissions on costs, they must advise the other side and Supreme Court Scheduling within 14 days of these reasons and are at liberty to schedule a date before me as soon as reasonably practicable to argue the matter. Prior to the hearing, each side will provide a brief (no more than two pages) written

argument to the other side and to the court at least seven days before the hearing date.

“L. Bennett J.”

L. BENNETT J.