

So what exactly constitutes just cause?

A review of 2 recent decisions sheds new light on terminations

BY DAN GLEADLE

Once an employment relationship comes into existence, employers are required to give reasonable notice to bring the contract of service to an end. The exception is if just cause exists — when the employer is permitted to dismiss without notice.

Regarding the test that must be met by an employer to dismiss for just cause, Justice Frank Iacobucci wrote for the Supreme Court of Canada in the 2001 *McKinley v. BC Tel* decision:

“Whether an employer is justified in dismissing an employee on the grounds of dishonesty is a question that requires an assessment of the context of the alleged misconduct. More specifically, the test is whether the employee’s dishonesty gave rise to a breakdown in the employment relationship. This test can be expressed in different ways.

“One could say, for example, that just cause for dismissal exists where the dishonesty violates an essential condition of the employment contract, breaches the faith inherent to the work relationship or is fundamentally or directly inconsistent with the employee’s obligations to his or her employer.”

Without setting out any specific list of circumstances in which an employer might prove the employment relationship had been irretrievably damaged, the court indicated summary dismissal would likely be found to have occurred if an employee:

- violated an essential condition of the employment contract
- breached the faith inherent to the relationship
- behaved in a manner fundamentally or directly inconsistent with the employee’s obligations to the employer.

This is a generally worded test that provides considerable scope for a trial court or arbitrator to decide whether summary dismissal is justified. Although *McKinley* involved allegations of dishonesty, its contextual analysis is of general application to

cases involving other causes.

Recent decisions where employers proved just cause

In *Grewal v. Khalsa Credit Union*, Sukhwinder Grewal was a long-service credit union branch manager at Khalsa Credit Union in Surrey, B.C., who sued unsuccessfully for wrongful dismissal damages. The employer succeeded in a just cause defence on grounds of conduct that was inconsistent with continued employment.

For a number of years before September 2006, when Grewal ceased work at the credit union, friction existed between Grewal and her CEO, Dalhir Sohi. Evidence showed Grewal failed to abide by Khalsa’s policies and procedures. A written warning was given in 2000.

After accusations back and forth, Grewal was disciplined via a transfer to a branch where she had fewer responsibilities. She worked there until October 2005 when she took disability leave. While Grewal was on leave, Sohi reviewed paperwork involving the renewal of a mortgage on the Grewal residence and found what he perceived to be irregularities that involved an early renewal that was to the employee’s benefit due to rising interest rates.

Khalsa communicated with the employee while she was off on disability, seeking information about the renewal, but Grewal did not respond. The event that brought matters to a head occurred after Grewal returned from leave. She was called in to meetings to explain her conduct in relation to the mortgage renewal. After these meetings, her lawyer wrote Khalsa a letter that made continued employment impossible, according to the court.

Khalsa said Grewal constantly failed to follow directions and procedures and was insubordinate. It pointed to the copying of correspondence to Sohi’s secretary after she was specifically ordered not to do so. Khalsa also said Grewal had an obligation to co-operate in the mortgage investigation and failed to do so. When questioned concerning the mortgage, she did not fully

disclose the information known to her.

Taken by themselves, and without regard for the letter, her conduct had not yet reached the point where Khalsa had cause to dismiss her, said the court. However, the letter tips the balance as the language was disrespectful and inflammatory. The accusations were serious and covered most aspects of her working relationship.

The letter demanded Sohi acknowledge he had acted in bad faith with the intent of injuring Grewal and her reputation. Sohi was expected to apologize for his conduct, in terms acceptable to Grewal’s counsel, and he had to refrain from future criticism of her performance.

The letter was also not substantiated by the facts. It alleged serious unwarranted invasions of Grewal’s privacy, none of which had been proven, said the court. Further, it suggested Sohi had been levelling petty complaints against Grewal as a pretext to discipline and dismiss her as an employee.

“Most if not all of the criticisms of Grewal had some substance to them,” said the court. “Sohi did not dismiss Grewal because of the mortgage. Rather, he gave Grewal an opportunity to explain the circumstances surrounding the mortgage. The letter says that Sohi intentionally set out to destroy her reputation by making false allegations. I find as a fact that he did not.”

Grewal’s letter was also sent to the board of directors and the credit union regulator.

“The letter was obviously intended to do serious damage to Sohi,” said the court. “The criticism of Sohi was disrespectful in tone and language and was irreconcilable with Grewal’s continued employment.”

In *Gillam v. Waschuk Pipe Line Construction Ltd.*, Robert Gillam was fired for cause by Waschuk because of behaviour characterized as bullying and sexual harassment. He had a supervisory role on a pipeline project and behaved inappropriately with three female employees, one of whom was a part owner of the company.

His harassing conduct involved “rough language”— conduct that appears to have been a result of socializing between Gillam’s son, Dustin (also an employee), and the three women.

Gillam’s misconduct consisted of repeated name calling, bullying and aggressive behaviour over an extended period of time, found the court. The targets were the only three women working at a large camp. Gillam’s misconduct occurred in the presence of employees who reported to him, found the court.

As a supervisor, he had a responsibility to ensure the workplace ran smoothly, to maintain an appropriate workplace and to ensure there was an appropriate work environment. Gillam acknowledged the type of language he used could create a hostile workplace and this language was not appropriate — the court agreed.

The case involved an interesting analysis of condonation, an argument advanced unsuccessfully by the employee, even after he had been told to apologize, and did so, subsequently being hired back for another

project. But there was not effective condonation, found the court, due to the lack of sincerity on the part of the employee and a fresh incident on the eve of the new project.

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