

Insubordination and Insolence: Just Cause for Summary Dismissal?

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Introduction

1. Relevant Legal Principles – Just Cause
2. Definitions:
 - i. Insubordination
 - ii. Insolence
3. Discussion of Relevant Case Law
 - i. Refusal to comply with instructions
 - ii. Unacceptable professional public behaviour
 - iii. Criticism of employer in email or letter
 - iv. Insulting and derisive statement



Just Cause?

Just Cause

- Is the employee's conduct incompatible with the duties that go to the root of the employment relationship?
- Courts have recognized gross misconduct may support immediate termination of employment
- Challenging for employers to determine when the misconduct, in fact, justifies summary dismissal

McKinley v. BC Tel

- Contextual approach to determine whether misconduct constitutes just cause
- It is a question of proportionality
- There needs to be a balance between the severity of the employee misconduct and the sanction or discipline imposed by the employer

Insolence

- Often described as derisive, contemptuous or abusive language or conduct directed at the employer

Insubordination

- Often described as the refusal to carry out a supervisor's orders
 - The wilful defiance of clear and unequivocal instruction by the employer
 - The refusal of the employee to carry out a policy or procedure known by the employee to be central to the employer's objectives

Insubordination

- Tension when the supervisor's instructions conflict with the employee's duties and/or employer policies



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Refusal to Comply with Instructions

Refusal to Comply

- Not every refusal to follow an employer's orders or contemptuous language will amount to repudiation of the employment contract
- Under what circumstances will an employer be entitled to terminate an employee for just cause in the face of insubordinate conduct?



Refusal to Comply

- Scenario



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Relevant Case Law

Refusal to Comply

Adams v. Fairmont Hotels & Resorts Inc.

- Adams refused to follow a directive by a hotel executive concerning the preparation of the hotel's annual budget
- Fairmont summarily terminated her for insubordination – felt she was questioning the VP's integrity which was “beyond the pale”

Refusal to Comply

- Court found no just cause for dismissal
- No question the directive was unequivocal
- But, employer not entitled to issue the order
- The directive was contrary to the employer's accounting policy, Adams' job description and Fairmont's Code of Ethics



Refusal to Comply

- Court emphasized Adams' significant responsibility, discretion and independent judgment within her duties
- Fairmont entitled to revise its policies to give General Managers less autonomy
- Fairmont entitled to provide Adams reasonable notice if it thought she no longer shared corporate vision or values

Refusal to Comply

Staley v. Squirrel Systems of Canada

- Manager moved to Quebec after his RCMP member wife secured a position there
- Employer allowed employee to work in Quebec for 4 months
- Employer directed Staley to return to BC to work
- Staley refused and was terminated w/o notice

Refusal to Comply

- Court held reasonable cause to dismiss Staley
- Refuse to return to Burnaby constituted an act of willful disobedience and insubordination
- Repudiation of employment contract by Staley

Refusal to Comply

Conclusions:

- Will not constitute cause unless the employer establishes that the employee breached an essential condition of the contract of service
- Where an employer chooses to set policies that govern its conduct, as well as that of its employees, the employer will be held to those policies and the legitimate expectations they create

Unprofessional “Public” Behaviour

Unprofessional Behaviour

- Under what conditions will an employee's critical, insolent, abusive or unprofessional comments or negative behaviour against their employer justify termination for just cause?

Unprofessional Behaviour

- Scenario



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Relevant Cases

Unprofessional Behaviour

Mejia v. LaSalle College International Vanc.

- Employee was a computer design instructor
- During a workshop he disparaged the College, the program, and advised the students how to file a complaint against the College

Unprofessional Behaviour

LaSalle Staff Handbook:

- Be professional and understand professional duties
- Professionally unacceptable behaviour subject to discipline including dismissal
- College terminated plaintiff without notice



Unprofessional Behaviour

Court sided with employer:

- Obligation to act at all times in the best interests of LaSalle
- Behaviour in complete conflict with the College and duty he had as an instructor
- No question conduct irreparably damaged employment relationship

Unprofessional Behaviour

Kim v. International Triathlon Union

- Employee was Senior Communications Manager
- Duties included writing press releases, athlete biographies, web stories, the newsletters, working with the media, being involved in ITU's social media



Unprofessional Behaviour

- No social media, communication or internet use policy
- Employer was on Facebook, Twitter – had an online public social media presence
- ITU alleged disrespectful, pejorative, and unnecessarily inflammatory comments on Twitter and on Kim's personal blog

Unprofessional Behaviour

Court's Reasons:

- Effect of the comments could not constitute cumulative cause
- No express or clear notice or warning the social media posts were inappropriate and unacceptable
- Kim never reprimanded or disciplined for them or warned job in jeopardy



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Criticism in Letter or Email

Criticism

- Are there circumstances in which a single email or letter written by an employee criticizing the employer or direct supervisor of the employer can effectively destroy an employment relationship and justify summary dismissal for cause?

Criticism

- Scenario



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Relevant Cases

Criticism

Van Der Meij v. Victoria Immigration and Refugee Centre Society

- Letter to BOD instead of to immediate supervisor to address complaints
- Forcing the BOD to make a choice between her or supervisor
- Letter made it very clear that they could no longer work together
- Employer justified to terminate

Criticism

Chen v. Sable Fish Canada Inc.

- Employee went over the head of his immediate supervisor and sent a letter critical of that supervisor to the executive, Board of Directors, and shareholders of the company.

Criticism

- Letter was clearly an attempt, in part, to embarrass both management and the Board of Directors to the shareholders
- Amounted to cause for termination.

Criticism

Fennel v. Kelowna Yacht Club

- Angry email sent to all the Yacht Club's directors and to the General Manager of the Club
- Plaintiff's misconduct was so serious that "a reasonable employer could not be expected to overlook it"
- Interesting conclusion for a 5 line email

Criticism

Grewal v. Khalsa Credit Union

- Letter sent to employer by Grewal's lawyer
- Copied to BOD, Deputy Superintendent of Credit Unions
- Serious allegations of wrongdoing made against employee's supervisor
- Demanded an apology
- Threatened legal action if apology not provided

Criticism

Court's Reasons:

- Termination of employment justified
- Letter tipped the balance
- Language of the letter was “disrespectful and inflammatory,” the accusations were “serious and covered most aspects of her working relationship
- Contents not substantiated by the facts

Criticism

Conclusions:

- In some circumstances criticism can undermine the employment relationship and render it impossible for the employee and their manager to continue working together
- When this occurs the employee's conduct will constitute just cause for immediate dismissal

Vile Insult

Insults and Derisive Statement

Wise v. Broadway Properties Ltd

- Good example of a single act of insolence constituting such grave misconduct that the employer was justified in immediately terminating the plaintiff's employment



Insults and Derisive Statement

- Mr. Wise, a resident caretaker of an apartment block threatened to sue his employer for the value of unpaid work
- Also directed a particularly offensive insult at the principal of his employer in the letter

Insults and Derisive Statement

- Owner was a Jewish man in his 80s and was deeply offended by the comment
- Court agreed:
 - The ill-advised comparison drawn by Mr. Wise between his treatment by Mr. Roadburg and the treatment of the Jews as forced labourers irretrievably destroyed any chance of a workable relationship between Mr. Roadburg and Mr. Wise



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Brief Conclusions

Brief Conclusions

- Range of conduct that constitutes insolence and insubordination is extensive
- One incident generally not sufficient
- Single act of gross misconduct may justify summary dismissal without duty to warn
- Employers and employees will be held to expectations created by policies, Handbooks, Code of Conduct

Questions?
Thank-you