

mccarthy  
tétrault

# Labour & Employment Breakfast Seminar

## Firing Right

When to proceed with a just cause  
termination?

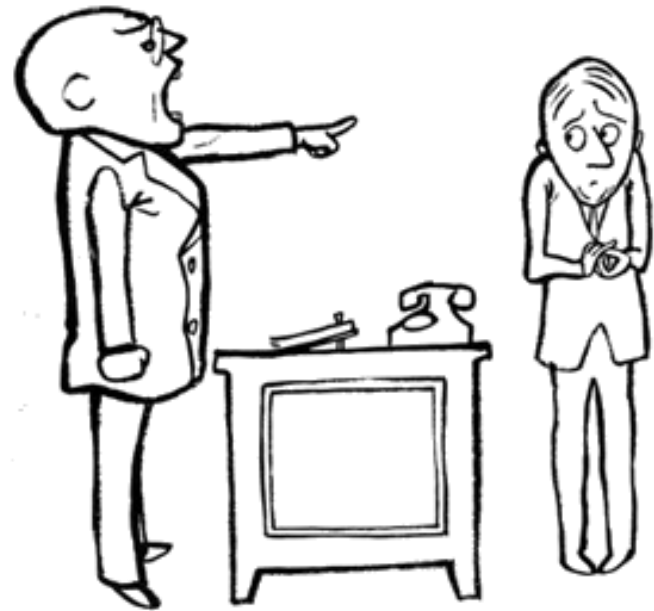
December 12, 2013



Will Cascadden, Partner

# Types of Terminations

- **Termination for Cause**
- **Termination Without Cause**



# Investigation



- Avoid impulsive dismissals
- **INVESTIGATE FIRST!!!!!!!**
- Gather pertinent information in advance (i.e. employee's length of service and statutory entitlements)
- Administrative/Investigation Leave
- Before deciding to terminate an employee for cause all pertinent information
- Employee Confidentiality

## Do You Have Cause?

- Misconduct must be serious
- Employer must be objectively expected not to be able to continue to employ the employee
- Lesser discipline will not be sufficient
- Extremely tough to maintain
- Messaging is important



# Poor Performance

- To meet the onus of proving performance problems, employer should:
  - Establish and communicate the objective standards of competence required.
  - Obtain evidence of gross incompetence.
  - Give clear warnings that the employee's job is in jeopardy if performance does not improve.
  - Give the employee reasonable opportunity to improve.



# Effecting the Dismissal



- Prepare a written notice of termination
  - Reasons for dismissal (be succinct but particular)
  - Payment of monies owed to employee
  - When benefits will terminate and conversion
- Meet with employee in private place, but with witness, come to the point, give brief overview of reasons, and present letter

# Poor Performance

- Establish that the employee's cumulative performance problems amount to incompetence.
- Do not say to an employee being terminated for performance reasons "I'm sure you're surprised."
  - The employee should not be surprised as a series of progressive disciplinary measures ~~should have already been enacted.~~



# Other Issues

- Abandonment
- Mental Illness/Disability
- Other Human Rights Issues



# Body Odor Problem

- *Bagnall v Calvin Klein Cosmetics*, 1994 ON SC
  - Fragrance demonstrator
  - Complaints of body odor
  - Disruptive behaviour
  - Just cause?



# Urinating in Sink

- *X v Y*, 2012 BC Arb
  - Bakery employee
  - Urinates in janitor's sink
  - Another employee witnesses the incident
  - Just cause?



# Exaggerating Incident

- *Scholer v Hart Drug Mart Ltd.*,  
2012 BC PC
  - Cashier
  - Complains to manager of getting kicked in the butt by a co-worker – clear exaggeration of event
  - Just cause?



# Refusal to Work During Vacation

- *Bigelow v T.C. Mobile Vessels Ltd.*,  
2011 AB PC
  - Day supervisor
  - Approval of vacation request
  - Refuses to work during scheduled vacation
  - Just Cause?



# Drinking on the Job

- *Ritchie v 830234 Ontario Inc.* 2009 ON SC
  - Warehouse manager
  - Drinks beer during inventory count
  - Fails to acknowledge safety concerns
  - Just cause termination



# Lighting Co-worker on Fire

- *Dryco Drywall Supplies Ltd. v TC, Local 213*, 2013 BC Arb
  - Foreman
  - Lights co-worker's safety vest on fire
  - Just cause?



# Office Relationship

- *Reichard v Kuntz*, 2011 ON SC
  - Purchasing manager
  - Affair with his subordinate
  - Non-fraternization policy with mandatory reporting of office relationships
  - Fails to report and repeatedly denies affair
  - Just cause?



# Sexual Relations with a Student

- *Cape Breton-Victoria Regional School Board v C.U.P.E., Local 5050*, 2011 NS CA
  - School caretaker
  - Sexual relationship with 15 year old student from another school
  - Just cause termination





# Relationship Break-up

- *Walsten et al v Kinonjeoshtegon First Nation*, 2009 MB QB
  - Positions on the Band's reserve
  - Relationship with Band's comptroller
  - Relationship ends
  - unexplained absences from work





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