

Cause for Concern – CRA Employees Terminated For Cause for Improper Collection of CERB Benefits

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By Daniel Wong, , Piper McGavin

Dismissal for “just cause” is often referred to as the “capital punishment” of employment law, as employment is terminated without any notice or pay in lieu. As such, it is generally reserved for cases in which an employee has engaged in serious misconduct.

The line between terminations “without cause” and terminations of “just cause” has been brought into focus by the recent news that the Canada Revenue Agency (CRA) has terminated 120 of their employees for inappropriately claiming the Canada Emergency Response Benefit while working.[\[1\]](#)

Just Cause at Common Law

This event speaks to a larger pattern of firings during the pandemic era and after. The common law has developed the concept of “just cause” to mean that if an employee is terminated based on their own misconduct, then their employer does not need to give them notice of termination or pay in lieu of notice.[\[2\]](#)

However, the bar to prove that an employer has cause to terminate an employee is high, and the onus is on the employer to prove just cause. Examples of grounds of misconduct to justify cause include sexual harassment, fraud, dishonesty, absenteeism or lateness, and serious incompetence. As established in *McKinley* at the Supreme Court of Canada, a finding of misconduct does not in itself give rise to just cause.[\[3\]](#) The court will review the facts on a case-by-case basis and will consider the context and circumstances of the misconduct in order to determine if the employer has met the threshold for cause. The test is whether the misconduct undermines or is incompatible with the employment relationship.

Examples of Termination for Cause

Notwithstanding the high threshold for an employer to establish cause, the courts in Ontario will uphold terminations for just cause in appropriate cases. In a recent 2023 Ontario Superior Court decision, a Costco employee of 20 years was terminated for just cause when he twice deleted a website he had created for internal company use, due to an interpersonal conflict.[\[4\]](#) The court identified four separate “serious” acts of misconduct, which led to Costco no longer trusting the employee. Ultimately, the court upheld the termination for just cause given that the misconduct was “incompatible with the fundamental terms of his employment relationship with Costco.”

Another example is found in a 2022 decision in which the Ontario Court of Appeal upheld a termination for just cause where an employee had touched a co-worker’s buttocks while “joking around.”[\[5\]](#) The court of appeal once again highlighted that the threshold for establishing cause is when the conduct is sufficiently serious and is incompatible with the employment relationship. The court conducted a fact-specific analysis of the employee’s conduct to determine whether it reached the bar of just cause and concluded that it did.

Similarly, in a 2021 Ontario Court of Appeal case, an employee was investigated after complaints of sexual harassment.^[6] Following a finding of harassment, the employer offered the employee sensitivity training and the opportunity to make an apology to the complainant. The employee refused to apologize. The employer then terminated the employee for just cause. The court of appeal found that failing to apologize in conjunction with the sexual harassment created cause for termination. The employee's unwillingness to accept the discipline of the employer justified a complete breakdown in the employment relationship.

Key Takeaways

Based on the above case law there are some key takeaways for employers presented with the challenge of terminating an employee for just cause.

1. The onus is on the employer to establish that there is just cause. An employer must be prepared to prove that there was a complete breakdown in the employment relationship due to the employee's misconduct.
2. The threshold to establish just cause is high, given the consequences to an employee. However, in certain circumstances, even one incident or act may constitute cause to terminate.
3. The court will examine each case on its own facts and circumstances. A finding of misconduct does not automatically justify just cause; it will be analyzed in the relevant context.
4. Clear policies that communicate company values and expectations for employee behaviour and the consequences for breaching such policies will support an employer's decision to terminate an employee for just cause if the termination is challenged.

If your organization requires assistance with an employee termination or advice relating to any other employment law matter, feel free to contact Dan Wong or Max Skrow or your regular lawyer in WeirFoulds' [Employment & Labour Practice Group](#).

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^[1] [CRA fires 120 employees for claiming CERB benefits \(citynews.ca\)](#)

^[2] In addition to the common law concept of "just cause", in Ontario, the *Employment Standards Act, 2000* also establishes minimum protections for employees. One such protection is the requirement for employers to give employees a minimum amount of notice of termination or pay in lieu. Terminations for certain employee conduct are an exception to this requirement.

^[3] [McKinley v BC Tel](#), 2 SCR 161 2001.

^[4] [Park v Costco Wholesale Canada Ltd.](#), 2023 ONSC 1013.

^[5] [Render v ThyssenKrupp Elevator \(Canada\) Limited](#), 2022 ONCA 310.

^[6] [Hucsko v A.O. Smith Enterprises Limited](#), 2021 ONCA 728.

For more information or inquiries:



Daniel Wong

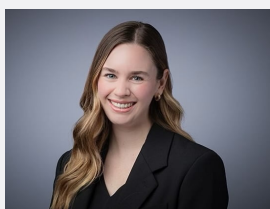
Toronto
416.947.5042

Email:
dwong@weirfoulds.com

Daniel Wong is Chair of the Firm's Employment & Labour Practice Group with a practice that is focused on employment and labour relations.

Toronto

Email:



Piper McGavin

Toronto
647.715.7027

Email:
pmcgavin@weirfoulds.com

Piper McGavin is an Associate in the Commercial Litigation and Employment & Labour Practice Groups. Her practice is focused on a broad range of employment and commercial disputes.

WeirFouldsLLP

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035