



Termination of Employment for Cause and Severance

By Shane Greaves, Partner

In Ontario, the Court has described termination for cause as being the “capital punishment” of employment disciplinary measures. This recognizes that terminations for cause will only be upheld in clear cases and, in many situations, can be successfully challenged by the employee.

When terminating an employee’s employment, the employer may allege that it has ‘cause’ for the dismissal. In doing so, the employer is asserting that the employee’s behaviour justifies a termination of their employment without payment of any termination pay, severance pay or other similar amounts.

In these circumstances, the employee can consider commencing a wrongful dismissal lawsuit against the employer. The onus is then placed on the employer to establish that the employee’s behaviour was sufficiently serious to justify a termination for cause. In many cases, however, the Court will rule that the employee’s actions were not sufficient to meet that threshold. The employee can then be awarded significant compensation at common law.

This is because the employer must overcome an onerous burden to demonstrate that there was cause for the termination. The Court has recognized that a single and isolated incident will normally not be sufficient cause for dismissal, especially for an employee with a clean disciplinary record. In order for one incident to justify termination for cause, it must be “particularly egregious”.

Alternatively, where the termination arises from a series of incidents, the termination for cause will rarely be upheld if the employer had not provided the employee with clear prior warnings which indicated that their employment was in jeopardy.

Even if the employer can convince the Court that the employee’s conduct justified a termination, the employee may still be awarded termination pay and severance pay under the Ontario *Employment Standards Act*. This is because statutory termination pay and severance pay must be paid to an employee unless they engaged in wilful misconduct, disobedience or wilful neglect of duty which has not been condoned by the employer.

For example, in a recent case, the Ontario Court granted statutory termination pay to an employee who had been dismissed after slapping another employee. While the Court found that the conduct justified a termination for cause, it also ruled that the conduct was not pre-planned. This meant that the conduct did not rise to the level of wilful misconduct which is needed if an employee is to be disentitled to termination pay (and severance pay, if applicable) under the *Employment Standards Act*.

If you are dismissed and your employer asserts cause for the termination, you may be in a stronger legal position than you first assume. Make sure to seek legal advice before accepting any offer from the employer.

For further information about this topic and the principles involved, please contact Shane Greaves by phone at 416.306.1810 or by email at sgreaves@beardwinter.com

[Click to Subscribe To
The Beard Winter Defender](#)

Disclaimer: The contents of this issue are provided for interest only and are not to be considered as, in any way providing legal advice to the readers by Beard Winter LLP or the individual authors of articles contained herein. All readers are strongly advised to obtain independent legal advice on any issue of concern to them from competent legal counsel in Ontario.

