

## ***Terminating For Cause: Ask First!***

A recent case decided by the Supreme Court of British Columbia provides a useful example of how *not* to handle a termination for cause.

In *Acumen Law Corporation v Ojanen*, Melissa Ojanen - an articling student at a criminal law firm - was terminated for cause. The firm alleged that Ms. Ojanen was attempting to compete against the firm by stealing and wrongfully using their marketing materials, among other allegations.

At the heart of the firm's decision to terminate was a blog that Ms. Ojanen appeared to have participated in drafting. The blog offered information regarding driving prohibitions, which was similar to a blog posted by the firm. The firm believed Ms. Ojanen had used stolen firm materials to create the blog and was therefore competing directly with the firm on her own time.

While the Court found that Ms. Ojanen did have a part to play in the creation of the blog, it decided her conduct did not warrant termination for cause and that the firm's conduct in dismissing her was unfair and undertaken in bad faith. Of particular importance to the Court's finding was the fact that the firm decided to terminate Ms. Ojanen for cause without ever asking her about her involvement in the blog or her intentions in creating the blog.

In addition to its failure to ask Ms. Ojanen about the blog, the firm accused her of deceit and dishonesty. The Court considered these accusations harsh, unwarranted, and based on unfounded suspicions. Despite having no basis for these allegations, the firm maintained the accusations throughout trial. The firm's conduct made it exceedingly difficult for Ms. Ojanen to find alternative employment after her termination. The Court ultimately awarded Ms. Ojanen \$18,934.00 for wrongful dismissal and an additional \$50,000.00 for aggravated damages based on the firm's bad faith conduct in the manner of dismissal.

This case serves as a reminder to employers to always conduct a thorough investigation before choosing to terminate an employee for cause. In most cases, this will include giving the employee in question a genuine opportunity to respond to the allegations being made against them. Furthermore, employers should not accuse employees of wrongdoing without actual evidence to support their claims. Given the inherent risks associated with terminating an employee for cause, please always contact an e2r® Advisor

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